FREE THOUGHTS

ON

SEDUCTION, ADULTERY,

AND

DIVORCE.

DIVORCE

FREE THOUGHTS

ON

SEDUCTION, ADULTERY,

AND

DIVORCE.

WITH

REFLECTIONS on the GALLANTRY of PRINCES, particularly thoſe of the Blood-royal of England.

OCCASIONED BY

The late Intrigue between his Royal Highneſs the Duke of CUMBERLAND, and HENRIETTA, Wife of the Right Honourable RICHARD Lord GROSVENOR.

ALSO

Remarks on the Trial at Law, between his Lordſhip and his Royal Highneſs, in conſequence of that illicit Amour;

WITH

Obſervations on the DEPOSITIONS ſince taken, in the Cauſe depending in DOCTORS-COMMONS, between Lord GROSVENOR and his LADY.

BY A CIVILIAN.

LONDON:
PRINTED FOR J. BELL, IN THE STRAND.
M.DCC.LXXI.

39
2 25
20

ADVERTISEMENT.

THE importance of the ſubject of the following ſheets, not only to the domeſtic happineſs of every proteſtant huſband in the Britiſh dominions, but to the manners and principles of the world at large, hath obliged the writer to go ſomewhat deeper into argument than may ſeem conſiſtent with the attention of the generality of readers. If they will excuſe, however, the unavoidable neceſſity of a few literary diſcuſſions, they will find the general ſcope of reaſoning to be as plain and ſimple, as are the reflections and obſervations on the circumſtances of the particular caſe conſidered; which are purpoſely adapted to the level of every capacity.——The ſevere indiſpoſition of the writer, while great par tof the work was going through the preſs, having occaſioned ſome typographical errors, the diſcerning reader will readily detect, and, it is hoped, as candidly excuſe them.

ADVERTISEMENT.

FREE THOUHTS

ON

SEDUCTION, ADULTERY,

AND

DIVORCE.

So capricious are popular cuſtoms, and ſo imperfect the beſt concerted ſchemes of ſociety; that the very means, which are calculated to promote the political happineſs of community, are often found to operate againſt the perſonal happineſs of the individuals compoſing it. As the general good, however, is known only by its influence on particulars, and the public peace to be valued only as it contributes to private ſecurity; in vain may a people boaſt of the moſt perfect ſyſtem of government, if the

maxims, or meaſures, of its adminiſtration, tend to the injury, and oppreſſion, of the ſubject.

The reſpect, which in all ages hath been paid to the rank and character of princes, ſo ſtrongly enforced by policy and inculcated by religion, is one of theſe ſalutary expedients; which, from the diſſoluteneſs of modern manners, prevailing in almoſt every court and country in Europe, is nevertheleſs become equally dangerous to the ſubject and diſgraceful to the ſovereign.

In arbitrary monarchies, where the Romiſh religion is ſtill cultivated; where abject ſubmiſſion is made the teſt of loyalty, and the moſt profligate princes are held to be accountable to God only, and not to the laws of their country, for their conduct; it is no wonder they are as extravagant in their actions, as is the veneration which is paid to their perſons. Beaumont, archbiſhop of Paris, expreſſly denounces damnation, in a late apoſtolic

apoſtolic mandate, againſt thoſe who fail in paying implicit obedience even to a Domitian or a Nero. Is it then to be wondered at, if, in France, where the ſovereign is thus complimented with the power of a deity, the princes of the blood-royal ſhould be tempted to trample at pleaſure on the rights of humanity? It is but acting in conformity to the ſaying of the ancient ſage, "When public opinion converts men into gods, they degenerate, in their private character, to brutes!"

The caſe is different in proteſtant countries, and particularly in ſo limited a monarchy as England, where the mutual relation between prince and people, and their reciprocal duties and dependance, are better known, and determined. A king of Great-Britain is the maſter only of his own ſervants: he is, or ought to be, the father of his people; his ſubjects are his children, and his indulgence in acts of gallantry, would be a kind of civil inceſt, as derogatory from the ho-

nour of the crown, as deſtructive of the peace and harmony of his political family.

If ſuch be the ſituation of the ſovereign, how little plauſible the pretext of thoſe who boaſt only an affinity of blood, to an exemption from the like reſtrictions? How prepoſterous the practice of engrafting their vices on the ſtock of his virtues! Shall his merely preſumptive heirs exert an immoral, an illiberal prerogative over the complacence or reſpect of any other claſs of ſubjects; while the king himſelf is bound by the ſacred tie of an oath, to reſpect the laws, and to protect the rights of the loweſt individual in his realm? the moral conduct of princes is doubtleſs an object of national as well as private concern: ſuch a dangerous influence do they derive from their titular and elevated ſtation. It has indeed been inculcated, and that by one of the dignified ſages of the law, "that the conduct of the princes of the blood in England, except the prince actually on throne,

is

is no object of national concern whatever. Every man," ſays he, " whether of high rank, or low rank, or no rank at all, is no leſs ſo." But could the ſhrewd, the ſenſible Dunning, really believe what he ſaid? Were not ſuch expreſſions mere flowers of rhetoric; ſuch as he ſo well knows how to ſtrew before a jury, when he would miſlead them in favour of his client? Did he not even then ſacrifice at the ſhrine of that idol of royalty he affected to debaſe? He muſt, he could not be doing otherwiſe: ſuch is the ſervile predicament of public pleaders!

It is true that princes of collateral conſanguinity to the throne, are merely ſubjects: they ſtand not even in a fraternal relation, to that political family, of which the king is father. They are thence exempted from the cenſure, to which the ſovereign himſelf would be ſubject in like circumſtances; but they have therefore the leſs right to take advantage of their affinity to his perſon, to break through the moral obligations, which

the ſovereign himſelf is religiouſly bound to reſpect; and which, happily for England, the reigning monarch does in himſelf moſt exemplarily reſpect.

In the eye of the law, I ſay, a prince of the blood is but a ſubject; but is he merely ſuch in the hands of the lawyers? Experience hath fully ſhewn us, he is not. The preſidents of our courts of juſtice pay themſelves their court at St. James's; and, ſtruck with the dignity of the royal perſonages in the preſence-chamber, too often forget their own dignity, as well as the majeſty of juſtice in Weſtminſter-Hall. To a man ſelf-conſcious of true dignity, poſſeſſing that of human nature, at the ſame time ſenſible of the invaluable privileges of an Engliſhman, a prince of the firſt rank will appear but as a man: but are all men ſo ſenſible and conſcious? and, if they were, will not weak women, captivated with ſuperficial ſhew and the glare of title, be ever apt to conceive a gallant, and amorous prince, ſomething more

than

than man, till, to their coſt and ſhame, they find him even leſs than a child.

By fatal experience we know, they will; they do. Not a fickle, though innocent, female, of the leaſt pretenſions to youth or beauty, but piques herſelf with emulation on diſplaying her charms to the beſt advantage, whenever an aſſembly is honoured with the preſence of one of theſe princely Tarquins in the world of gallantry. At the ſame time the moſt flattering indulgence is generally adminiſtered to this weakneſs, the natural attendant on female vanity, by the friends and relations of ſuch as have the ſatisfaction particularly to attract their royal attention,

It is yet taking the moſt unprincely, the moſt illiberal, advantage of the deference paid to royalty through motives of allegiance and reſpect, to convert ſuch laudable principles into the means of effecting the moſt odious purpoſes. To make loyalty the ſource of licentiouſneſs and betray the confidence,

which ſuperior rank might claim from ſuperior merit, is to pollute the ſtreams that immediately flow from the fountain of honour, with the filth of the foulеſt drains of demerit and debauchery.

But to wave declamation. Sententious and general as theſe reflections may ſeem, they are no leſs pertinent than particularly applicable to a recent tranſaction in life; which muſt bring them home to the breaſt of every peer, of every man of honour, and ſenſibility in the kingdom. I mean the Duke of Cumberland's late amour with Lady Groſvenor; a topick that has univerſally agitated the tongues and pens of the ſcribblers and tatlers of the preſent age.

Among the former, indeed, there have not been wanting wretches, ſo abandoned by every principle of honour; ſo totally loſt to a ſenſe of moral virtue and the political welfare of ſociety, as to undertake a profeſt juſtification of the crime of adultery in the royal

royal ſeducer, and even an apology for the adulterous conduct of the unhappy Lady ſeduced.

Reproachful as is the charge ſo juſtly brought againſt the parties offending, in the act, their criminality is venial, when compared with that of theſe avowed and officious defenders of it. The one have the plea of paſſion in excuſe for their vicious indiſcretion; the other have no plea but the moſt ſordid and iniquitous venality, for their atrocious effrontery. Diſhonour may purſue the one, but infamy and deteſtation muſt accompany the other.

To do juſtice to the principal delinquent, it muſt be confeſſed the predicament in which the princes of the blood-royal in England at preſent ſtand reſpecting matrimony, is ſincerely to be lamented. The expediency, or rather ſtate neceſſity, of their being joined in marriage with ſome foreign princeſs of equal rank, or of remaining ſingle for life,

condemns

condemns them in effect to a ſtate of perpetual celibacy. Reſtrained from intermarrying with the Britiſh nobility, a familiar intercourſe with their wives and daughters, is no leſs perilous and incentive, on the part of the one, than dangerous and ſeductive on the part of the other.

This reſtraint is another of thoſe political cuſtoms, whoſe ſalutary effect, in one ſenſe, is ſtrongly counteracted by its ill conſequences in another. It may be better, perhaps, for the nation in general, that the domeſtic happineſs of a certain number of families, even of rank and diſtinction, ſhould ſuffer through female imprudence and conjugal infidelity, than that ſuch deſperate diſputes, as thoſe of the houſes of York and Lancaſter, ſhould embroil the kingdom with civil wars, on account of rival pretenders to the throne. But, while prudence dictates the maxim, of two evils to chooſe the leaſt, in the reſtraint thus laid on princes by the wiſdom of government; it becomes them, as men of prudence

dence and principle, to chuſe, of two modes of gallantry, that which is the leaſt criminal in itſelf, the leaſt obnoxious to ſociety, and the leaſt opprobrious to the royal family, of which they conſtitute a part.

Concubinage hath been allowed in moſt countries, both under the diſpenſation of the law and the goſpel; and in the circumſtances in which princes are ſituated in this country, ſimple fornication, however odious to the chaſter manners of modern times, might be tolerated perhaps without great ſcandal in caſes of this neceſſity *. But a promiſcuous indulgence with various objects, the ſeduction of married women one day, and the low debauchery of the ſtews the next, are ſo incompatible with the character of a prince, that they reflect an odium on the very perſon of the man. From men of middling rank, the world expect at leaſt decency of behaviour; from thoſe of birth and education, a kind of delicacy even in

* Perhaps the method practiſed in Germany, by perſons of rank marrying thoſe of inferior ſtations, might be adopted with ſucceſs: the children by ſuch marriages not inheriting the title of the father.

their vices. If they want virtue they ſhould not want ſpirit; however profligate, they ſhould not be deſtitute of pride. Tenacious of that ſuperiority, the world is but too ready to allow him; a prince ſhould ſurely be as ambitious as the peaſant? he ſhould lay claim to the excluſive poſſeſſion of the object of his attachment. He ſhould not meanly ſtoop to ſteal a ſhare of that, to which another, by the laws of ſociety, hath a prior right, and in which the honour of his family, and his domeſtic happineſs, are ſo nearly intereſted. The example of the young hero of antiquity, who, in the very hour of dalliance and in the height of expectation, checked the ardour of his paſſion, and expreſſed his horror to find his conſenting miſtreſs the property of another, is well known and admired. Even the rape of the Sabines, was an outrage ſoon forgiven; the very brothers of the raviſhed virgins, uniting and becoming one people with the raviſhers. It was otherwiſe with the inſult offered to the wife of Collatinus: the rape of Lucretia

coſt the princely raviſher his life, and the king, his father, his crown. The expulſion of the Tarquins, and the total ſuppreſſion of kingly government in Rome, were owing to the adulterous gallantry of a prince of the blood. Modern times afford no examples of ſimilar reſentment in the ladies: we have no Lucretias! but modern manners afford ſufficient opportunities for princes to gratify their inordinate appetites, without proceeding to perſonal violence. Their rank and ſtation entitle them to a confidence, which places them often in circumſtances, in which the ſeduction of the mind is much more diſhonourably criminal, than would be a rape on the body.

I do not affirm, that this was altogether the caſe, in the intrigue between his Royal Highneſs and Lady Groſvenor; but, if we have a retroſpect to the ſituation, in which her Ladyſhip's relations ſtood, as to their connections with the court, their entire devotion to the royal family, and in a great meaſure

meaſure dependance on that devotion; if we reflect alſo on the loyalty and attachment, which the Groſvenor family have on all occaſions, demonſtrated for royalty, and the prerogatives of kingly government, we muſt of neceſſity be compelled to own, that the return it has met with, both in the perſons of his Lordſhip, and the Lady, has been as incompatible with the laws of juſtice and honour as inconſiſtent with the principles of generoſity and gratitude.

The meaſures which his Lordſhip hath, therefore, taken to do himſelf legal juſtice, appear to be the very natural reſult of a ſpirited and well-founded reſentment. I cannot ſay, the ſame ſpirit hath been kept up in the purſuit of thoſe meaſures, or that his ſucceſs hath been hitherto equal to the juſtice of his cauſe: the fatal influence exerted by government againſt thoſe who are under the unhappy neceſſity of contending with ſuch as are allied to the crown, will perhaps account for both. Public encomiums, indeed, have been

laviſhly

laviſhly beſtowed on the learned pleaders engaged in the trial at law, to which this illicit amour hath given occaſion; as alſo on the jury who found a verdict for his Lordſhip. The one have been as highly complimented for their judicial ſagacity, as the other for their juridical integrity: and yet, on the face of the trial, the merit of both appears highly problematical.

The talents and abilities of the learned counſel indeed are too well known and eſtabliſhed, in general, to be called in queſtion by an anonymous writer. The particular application of them, in this caſe, however, will admit of ſome doubt.

As to the jury, there is likewiſe an equally apparent cauſe of ſuſpicion, that they were not altogether ſo judicious, independent and impartial as even the contending parties, on both ſides, ſeem diſpoſed to admit.

The world hath been repeatedly told that "the verdict was the unanimous opinion of a ſpecial

a ſpecial jury, compoſed of judicious independent men of fortune; who, like honeſt Engliſhmen, gave their verdict; regardleſs of the frowns of a prince of the blood and all the abilities that were diſplayed from the bench, to miſlead their judgement."

It ſhould ſeem by theſe encomiaſts, that they thought the world inclined to believe that the diſhonour of a nobleman, of one of the moſt antient and reſpectable families in the kingdom, exceeded by few in opulence and none in loyalty, would be ſufficiently compenſated by damages that might reaſonably have been given to a private citizen; and that no harm could accrue to ſociety, if a prince of the blood with unlimited permiſſion to draw upon an unlimited national fund, ſhould ſeduce the wife of any other nobleman, or gentleman, he pleaſed, on paying the ſame eaſy fine.

The dignity and honour of the peerage indeed are more particularly intereſted in this cauſe;

cauſe; their nearer approach to the throne and more intimate intercourſe with the perſons of the royal family, ſubjecting them more to inſults of this nature, than the lower orders of gentility. But can I have the effrontery to put the queſtion to a peer of Great-Britain, whether he ſhould think the ſum of ten thouſand pounds an adequate compenſation for the violation of his bed, and the horrors attending ſuch a breach of his domeſtic happineſs? Let every peer lay his hand upon his breaſt, and tell me whether the laying his hand upon his ſword, would not be the indignant, and proper anſwer to ſo impudent, ſo degrading, a queſtion.

If the gentlemen of the jury did really think, in their conſciences, that ſuch a ſum was an adequate reparation, for the injury thus done a Britiſh peer; and at the ſame time a ſufficient check to the vicious gallantry of a prince of the blood ſo circumſtanced, they appear to me to have had too little knowledge

of the preſent value of money, to be men of very independent fortunes; as well as to have paid too little regard both to the dignity of the peerage, and the rights and privileges of Engliſhmen, to deſerve many encomiums for their ſpirit or impartiality.

Without meaning to caſt any reflection on gentlemen in the commiſſion of the peace, I muſt obſerve that among the names of the jury there are thoſe, of ſeveral Middleſex magiſtrates. I would not inſinuate that the dependence, which ſome ſuch magiſtrates are known to have on the crown, had any actual influence on thoſe particularly in queſtion: but I ſay that *prima facie* ſuch a jury does not appear to be the moſt likely to be favourable to a plaintiff, bringing an action againſt one of the brothers of the prince on the throne.

But, admitting the jury to have been unexceptionable in point of integrity, unleſs they had been abler lawyers, than the ableſt that appear

appear to have been in court, it was extremely difficult for them to ſteer a proper courſe, amidſt the contradictory arguments of the contending pleaders, and the artful and inconſiſtent charge, delivered from the bench.

It is indeed remarkable that two ſuch firſt-rate counſel, as Dunning and Wedderburne, ſhould ſo learnedly labour the matter of damages, as they did at this trial, and that in a different manner; each declaring, at the ſame time, that his was the only light, in which he had ever viewed or known the point to be conſidered; and that, after all, the more learned judge, ſhould in effect ſuperſede the whole, by ſaying that he muſt ſet the jury right; for the many rules which had been laid down in this reſpect, were contrary to, and ſubverſive of, every principle and idea of law and juſtice.

If two ſuch eminent lawyers as thoſe abovementioned, could ſo long take up the time of the court, with laying down rules incom-

patible " with every principle and idea of law and juſtice;" well might a jury of modeſt gentlemen, no adepts it is to be preſumed in law, be bewildered in their judgement as to ſo apparently intricate and doubtful a point; and that eſpecially as the learned judge himſelf, as I ſhall preſently ſhew, did but little mend the matter in his charge; not entering ſufficiently into the grounds of damage, to enable them to form a judgement of the legality or rectitude of the verdict, he ſeemed to recommend.

It may indeed be ſeriouſly queſtioned, how it came about, that ſuch able members of the the law ſhould, after ſo many years practice and ſtudy, be in this particular caſe ſo much to ſeek, reſpecting the common principles of law and juſtice. Was it reſerved by fate or fortune, as a peculiar mark of diſtinction to his Royal Highneſs, being the firſt perſon of his rank and quality againſt whom ſuch an action had been brought, to cauſe a diſſipation or perverſion of the ideas of all former

pleadings,

pleadings, and proceedings, in caſes of the like nature? Be this as it may, the difference of opinion between the counſel, and between theirs and that of the bench, is no leſs ſingular than that there ſhould be any difference of opinion at all, in a matter of law that had ſo often come before them, as the ground of damages in an action for criminal converſation. "The hair-breadth ſcapes and imminent deadly breaches" of a military life are not more perilous and fatal to the ſoldier, in the purſuit of honour in the camps of war, than the hair-breadth diſtinctions and caſuiſtical chicanery of the lawyers, are perilous and fatal to the client, who is in purſuit of juſtice in our courts of law. Deadly however as they may prove to the plaintiff, they afford a cruel diverſion to the authors, and ſometimes the ſpectators of the contention.

A conſcientious jury is in the mean time an object of compaſſion. Anxious to diſcharge their duty, in conformity to their oath, it cannot be without concern and chagrin they

find themſelves amuſed with vague and deſultory reaſonings, or puzzled with diſtinctions without a difference, and all the formal pedantry of technical terms, that ſerve but to perplex the manner, inſtead of clearing up the matter, in diſpute.

In this ſituation I conceive the jury, on the trial in queſtion, to have been, as to forming their judgement on ſeveral important particulars. I ſhould imagine, for inſtance, they might be at ſome loſs, if they did not conſult their own feelings, to determine, whether they were to look upon their verdict, as an object of *public* or *private* concern. Mr. Dunning laboured to perſuade them, it was a matter of little or no conſequence to the publick. The charge from the bench alſo ſtrongly inſinuated, that it was an affair of mere private, and perſonal concern; and that the damages ſhould be proportioned only to the injury ſuſtained by the plaintiff. Mr. Wedderburne, on the other hand, exerted himſelf to repreſent it as an event

event, of the utmoſt importance to every peer, and every married man in the nation, and uſed all his oratory to excite the paſſions of the jury, to ſhew a reſentment ſuitable to the occaſion, in finding conſiderable damages,

Impartiality will certainly take part with Mr. Dunning, in ſuppreſſing every motion of reſentment on any occaſion, in the breaſt of a jury; but, if there be a juryman in the kingdom, who does not think himſelf intereſted, in finding exemplary damages in caſes of adultery, he is either not a married man, or deſerves to be made a moſt egregious dupe, by the firſt gallant that is inclined to ſeduce his wife,

It is true that adultery is not, as the law ſtands at preſent, in moſt countries, a public crime. It is not an indictable offence, like robbery, maiming, or murder; for which any perſon may proſecute the offender. The huſband alone is allowed to proſecute; nor

can the king's advocates, his attorney or ſolicitor general, intermeddle. Not that it was always ſo. By the Julian law, among the Romans, the accuſation of adultery was open to every body; though ſtrangers were ſeldom permitted to proſecute, eſpecially where the huſband himſelf was contented, and made no complaint. There is no doubt that the event of the trial, in theſe caſes, more particularly concerns the huſband, who is the proſecutor: but ſo it does in many other criminal proſecutions. But though the huſband is the moſt particularly intereſted in the incontinency of his wife, the inflicting damages, which acts as a puniſhment on her ſeducer, muſt, by exhibiting a ſalutary example to debauchees, eventually intereſt every other huſband in the kingdom. Though adultery, therefore, be not a publick crime, in reſpect to the proceedings againſt it at common law, the puniſhment of it, in the only way the law admits, by action of damages, is an intereſting object of *national* and *publick* concern.

Again,

Again, I conceive the jury might be not a little perplexed, to determine whether they were to conſider the cauſe before them, as a *civil* or *criminal* one. They were firſt told, by Mr. Wedderburne, in behalf of the plaintiff, that it has been uſual to conſider theſe caſes as criminal; the judges having formerly formed their directions upon this principle. And in this light he proceeded to conſider it, with reſpect to the damages; on the preſumption that the defendant's counſel could have no objection to the taking it ſo. Mr. Dunning, in reply to this part of Mr. Wedderburne's argument, expreſſed himſelf as follows: "I underſtand this is a criminal cauſe "not a civil one, and my learned friend was "ſo kind as to ſay he would aſſent to that doc-"trine; but I don't ſee I have any intereſt "to contend for that propoſition, my judge-"ment don't lead me to contend for it: not "that it matters an iota, when I conſider what "is to be obſerved in the conſideration of "damages. It is ſomething materially diſ-"tinguiſhable, that it is not an action for "puniſhment, not an action for example,

"not

"not an action for vengeance; but it is, "what the terms of the action import, a "claim for a civil reparation for a civil in-"jury."—If the printed trial does not miſlead us, and to the beſt of my recollection it does not, materially; this learned counſel contradicts himſelf within the compaſs of a few ſentences. Firſt, it *is not* a civil cauſe, and then *it is* a civil cauſe. In the name of conſiſtency what were the jury to gather from this looſe, and equivocating mode of argument?

In the beginning of this gentleman's harangue, he expreſſly tells the jury, that the ſingle queſtion they are to try is, "Whether the defendant has been proved to have been *guilty* of the *offence* imputed to him by this action;" viz. to have *violated the bed* of the plaintiff Lord Groſvenor.

If Mr. Dunning calls this *guilt*, this *offence*, this *violation*, the ſubject of a mere *civil* action; he has certainly very ſingular no-

tions

tions of civility; and is a mighty civil caſuiſt indeed!

With this learned pleader's permiſſion, alſo, I muſt be bold to tell him, that, whatever advantage he may take of the formality of terms, actions of this nature are in fact, call them what you will, actions for *puniſhment*, actions for *example*, actions for *vengeance!* they are actions brought to *puniſh* the delinquent, to afford wholeſome *example* to the publick, and ſatisfy the juſt *vengeance* of an injured huſband.

As to the matter of damages; the jury could not fail, I ſhould think, to be as bewildered in their opinions, as the counſel were perplexed in their pleadings; eſpecially as the reaſons, given for the judgement of the court, ſeem equally defective and confuſed.

"I have never heard," ſays Dunning, "the conſideration of what the defendant ought to pay, made the conſideration of damages; I have

have always underſtood it to be, what is the plaintiff, under all the circumſtances to receive." On the other hand, I, ſays Wedderburne, "have miſunderſtood the direction of the court in *all cauſes*, if it is not what the defendant ought to pay; not what the plaintiff ought to receive."

Would one imagine that theſe learned gentlemen had, for many years, practiſed in the ſame court? To have *always* and in *all cauſes* taken the judgement of it, in ſo very different a manner, is really ſomething very extraordinary: and I can no more conceive how it ſhould have happened, than how the jury ſhould, from ſuch information, be able to form any judgement of the matter.

The charge from the bench, in this particular, is extremely artful; and is a maſterpiece, of that low cunning, to which, when men of talents and abilities deſcend, they confer on it a dignity, which makes it paſs, with

with the ignorant and undiſcerning, for acute judgement, and profound penetration.

Perhaps the motive for this condeſcenſion, may be hereafter gathered from facts and circumſtances, with which I ſhall be led, in the courſe of theſe ſheets, to bring the reader better acquainted.

In the mean time, I ſhall proceed to juſtify what I have obſerved, reſpecting the artifice of this courtly and cauſidical charge.

It is remarkable that, in the very opening of it, the learned judge gives the jury a hint, of the favourable opinion, he entertained of the cauſe, reſpecting the defendant. Gentlemen of the jury, ſays he, "this action is brought againſt the defendant for what is called criminal converſation with the plaintiff's wife." Not for criminal converſation itſelf, but for *what is called* ſo. *Ex uno diſce omnes.* I ſhall paſs over, therefore, his Lordſhip's inſiſting on proofs of the *preciſe act* of carnal copulation; and alſo his recapitulation and remarks

remarks on the evidence: becauſe, if the jury were not ſatisfied by the evidence given of the foregone concluſion, viz that ſuch preciſe act had paſſed, they could not in conſcience find a verdict for the plaintiff.

But this they did: the matter of damages, therefore, and the ſubſequent particulars of his Lordſhip's charge, become the immediate object of conſideration. I ſhall examine this minutely, quoting his words at large. "You "will weigh," ſays this very able judge, "the "whole circumſtances; as you muſt be ſa-"tisfied in your mind, of the criminal act hav-"ing happened; and, if you are not ſatisfied "of the criminal act having happened, you "muſt find a verdict for the defendant, The "next thing, if you find a verdict for the "plaintiff, is the conſideration of damages; "and upon that point I ſhould not have ſaid "a word, if this cauſe had been conducted, "as moſt cauſes are; * but the matter of

* An indifferent perſon might think it was conducted *as moſt cauſes are*, very inaccurately: but the learn-

"damages

" damages has been ſo laboured in this cauſe,
" and ſo many rules laid down, which are
" contrary to every principle of law and juſtice
" in theſe caſes, that I muſt ſet you right.
" They are rules ſubverſive of every princi-
" ple and idea of law and juſtice. In the firſt
" place, we are to know nothing of the per-
" ſons, of plaintiff or defendant. God forbid
" the adminiſtration of juſtice, ſhould depend
" upon circumſtances relative, to the perſons
" of the plaintiff or defendant. There juſtice
" is ſaid to be blind, and we are to try this
" cauſe, as all others ſhould be tried, the ſame
" as if it were between *A.* and *B.* the rank of
" the plaintiff in this cauſe, makes no manner
" of difference, as to the injury or ſatisfac-
" tion he is entitled to: for an injury done
" to the bed of any commoner of England,
" is as much an injury to him, and to his do-
" meſtic peace, as to a peer of the realm; the
" injury is as great to a man of low as high
" rank; and, therefore, the ſituation of the

ed judge, it ſeems, did not think it was inaccurate enough.

" parties

" parties is not the meaſure, by which damages " are to be governed; but they are to be go- " verned by the nature of the cauſe, upon the " evidence."

I will religiouſly repeat, with this upright judge, " God forbid the adminiſtration of juſ- ſtice ſhould depend on circumſtances relative to the *perſons* of plaintiff or defendant:" but I will not ſay the ſame of circumſtances relative to their *rank* and *condition* in life. On the contrary, I well know that the due conſideration of theſe circumſtances, is eſſential, in the ad- miniſtration of juſtice, and the juſt diſtribu- tion of compenſations and puniſhments. *

If it were not ſo, and cauſes of this kind were to be tried, like all others, as between *A.* and *B.* without regard to the rank and and condition of the parties, the verdict,

* Blackſtone, on his commentaries on the laws of England, expreſsly declares that the quantum of damages, in theſe caſes, ſhould be proportioned to the rank and for- tune, both of plaintiff and defendant.

See Black. Comm. vol. 3, page 139.

which

which might be given againſt *A.* might be no puniſhment at all; while the ſame verdict, given for the ſame injury againſt *B.* might be his total ruin. If the one were very rich and the other very poor, this might eaſily be the caſe: and can ſuch a method be ſaid to be conſiſtent with the principles of law and juſtice? would not the little finger of the law lie heavier on a poor man, than its whole loins on the rich? would not the lower ranks of ſociety ſuffer under the ſevereſt rod of correction, while the higher, the rich and great, might commit outrages with impunity? And is this conſiſtent with his Lordſhip's principles and ideas of law and juſtice? Let me be permited to ſay, in my turn, God forbid!

It is ſaid the injury done to a commoner, in the violation of his bed, is as great as that done in the like caſe to a peer of the realm: that it is as great to a man of low as high rank, and therefore the ſituation of the parties is not the meaſure by which damages are to

be governed, but they are to be governed by the nature of the cauſe upon the evidence.

I ſhould be glad, however, to know, what theſe learned lawyers mean by the *nature of the cauſe*, abſtracted from the rank and condition of the parties. Thus, Mr. Dunning, ſpeaking of the injury ſuſtained by the violation of the marriage-bed, ſays "I know that the manners of the world and the faſhions and the cut of the garment, if I may call it ſo, has made diſtinctions where the nature of the caſe makes none." Now, with due deference to theſe authorities, I affirm that the manners of the world and the faſhions, the cut of the garment, if he will call it ſo, make a very *eſſential diſtinction* in *cauſes of this kind*; they conſtitute, in a great meaſure, the very *nature of the caſe*. Setting this violation aſide, as a breach of the laws of God, and conſidering it merely in a moral and political light (in which only it is brought into court, in the form of a civil action) I affirm they conſtitute the whole.

For

For, will it be pretended that, in countries where the violation of the marriage-bed is cuſtomary and venial, there would be any grounds for ſuch an action at all? would ſuch a caſe or cauſe have ever exiſted?

The nature of the caſe is political and variable; not phyſical and invariable. The violation of the marriage-bed is not a natural injury, like that of maiming, rape or murder: its degree of civil and even moral turpitude depends on manners and opinions; on times and circumſtances. Lycurgus deemed the adulterer a parricide and puniſhed him accordingly. The Locri tore out his eyes. The old Saxons uſed to burn the adultreſs, and hang the adulterer on a gibbet erected over her aſhes. Canutus the Dane baniſhed the man and ordered the woman to have her noſe and ears cut off. Adultery was once puniſhed as homicide even in England. In Spain they formerly puniſhed the adulterer, by cutting off the inſtrument of the crime; and in Poland left the criminal to do that piece of juſtice on himſelf, by nailing the part to a poſt in the

open market-place and putting a razor within his reach, leaving him at liberty to periſh in that ſituation, or caſtrate himſelf as he liked beſt. In Holland, even at this day, the crime of adultery and even that of fornication * in married men, is puniſhable by public whipping; although in fact they are ſeldom ſo puniſhed; becauſe the ſchout, or officer who is the legal proſecutor, conſtantly commutes the crime, or drops the proſecution for a ſtipulated ſum, according to the circumſtances of the criminal. Hence the wealthy are ſometimes ſeverely fined in that country for fornication; while thoſe, who are ſo poor as to be able to pay no commutation, are ſeldom or ever proſecuted at all. How far this be equitable I pretend not to ſay; but it is certainly politic; as our wives and daughters run greater danger of ſeduction from the higher than the lower ranks of men.

It is fortunate for his Royal Highneſs, and others in his predicament or of his diſpoſition,

* This diſtinction will be fully explained hereafter.

they

that they do not live in ſuch times and countries; but in an age and nation, wherein the laws and cuſtoms are more favourable to their follies and foibles. But, will the lawyers pretend that the *nature of the caſe*, as to the violation of the marriage bed, was not very different in thoſe times and places? and will they ſtill pretend that the nature of ſuch caſe does not depend on the manners and cuſtoms of the times?

The celebrated Marquis de Beccaria, in his famous treatiſe on rewards and puniſhments, goes ſtill farther. "Whoever" ſays he, "reads, with a philoſophic eye, the hiſtory of nations and their laws, will generally find that the ideas of virtue and vice, of a good or a bad citizen, change with the revolution of ages; and that not always in proportion to the alteration of circumſtances and conſequently conformable to the common good, but alſo in proportion to the paſſions and errors, by which the different law-givers were ſucceſſively influenced. He

will frequently obſerve that the paſſions and vices of one age are the foundation of the morality of the following; that violent paſſion, the offspring of fanaticiſm and enthuſiaſm, being weakened by time, which reduces all the phenomena of the natural and moral world to an equality, becomes, by degrees, the prudence of the age and an uſeful inſtrument in the hands of the powerful or artful politician. Hence the uncertainty of our notions of honour and virtue: an uncertainty which will ever remain, becauſe they change with the revolution of time; and names ſurvive the things they originally ſignified; they even change with the boundaries of ſtates; which are often the ſame both in phyſical and moral geography."

Nor is this difference of opinion ſolely applicable to nations in general. The difference of education and manner of life produces a wide difference of ſentiment in this reſpect among individuals, of the ſame age and country. The ſenſibility and delicacy of ſome men are remarkably acute and diſtreſſing. The

inſenſi-

inſenſibility and indelicacy of others are as remarkably blunt, torpid, and indifferent. Will it be pretended that an injury of this nature, done to the latter, would be as great as that done to the former? The laws indeed do not provide for the particular feelings of individuals; but they may, and do, for the general ſituation and ſentiments of the different ranks and orders of men. There are few perſons ſo careleſs about what paſſes among their acquaintance, but they may recollect ſome one among them who is notoriouſly a dupe to a wanton wife; and yet, either through meaneſs or inſenſibility, makes a kind of virtue of neceſſity and ſits down contented and eaſy under his misfortune. But can they aſſent to this doctrine, that an injury of the ſame nature, done to themſelves, would be no greater a breach of their domeſtic peace than to the contemptible huſband who cheriſhes the object of his own diſgrace?

In the loſs of limb or life, one man may feel as much pain as another; nay a reptile may feel as much as a man.

The poor beetle, that we tread upon,
In corporal ſufferance feels a pang as great
As when a giant dies.

But it is not ſo with the loſs of honour. This is a moral and political, not a natural and phyſical, evil. It is an injury, the ſenſe of which depends partly on public opinion, and partly on private ſentiment: the value every man ſets on it, being generally adapted to the rank and ſtation he holds in life.

It is poſſible that a judge, ſo well acquainted as Lord Mansfield with the mercenary motives and pecuniary principles of mankind, may think theſe arguments too ſentimental to weigh with a Weſtminſter jury. But, to conſider the injury in this caſe as a mere invaſion of property, it may, as a money-matter, be made an object of calculation. That the wife is the property of the huſband, at leaſt ſo far as her perſonal attention and ſervices contribute to his comfort and ſatisfaction, will hardly be denied. Hume, one of the firſt philoſophers and politicians of the

preſent

preſent age, imputes the civil origin of marriage to the deſire of man, in a ſocial ſtate, to have an *excluſive* poſſeſſion, or right of property, in an agreeable female; whom he in conſequence prefers to his bed. The ſeducing a woman, therefore, from the allegiance due to her huſband, by which he is of courſe deprived of that zeal and affection for his ſervice to which he has an excluſive right, is in effect a theft; it is in fact robbing him of the moſt valuable part of his *perſonal* eſtate. If to this we add the obvious circumſtance of introducing a ſpurious iſſue to inherit his *real* eſtate, the ſeducer is plainly guilty of a wilful deſign to rob the injured huſband of his *whole fortune* REAL and PERSONAL.*

To what end do fathers of families endeavour to accumulate eſtates, but to provide for their children? Does not the father, there-

* The lawyers may ſtill equivocate, and ſay that, in matters of property, no farther damages are to be allow'd than can be proved. But it is beneath the writer to give any reply to the quibbling pleas of petty chicanery.

fore,

fore, of the baſtard of an adulterous bed, rob the huſband of his eſtate; to confer it on his own *natural* (I was going to ſay; but I will ſay *unnatural*) children?*

And is there no difference, in this invaſion of property, whether it reſpect a wealthy peer, or a poor peaſant? with what confidence could a judge, complimented with the name of a Juſtinian,† give in charge to a jury that, in caſes of this nature, the injury done to a man of high and low rank is equal.

* The Romans denied the name of *natural* children to the iſſue of an adulterous bed.

† Not that this is any ſuch great compliment; if Milton's character of that emperor be juſt; when he ſays "he "was neither wiſer nor more religious than his prede- "ceſſors, but noted by judicious writers for his fickle "head, in making and unmaking laws." The character of our modern Juſtinian is, according to ſome, well hit off by Horace, in his dialogue with his friend Quintius.

HOR. Vir bonus eſt quis?
QUIN. Qui conſulta patrum, qui leges juraque ſervat,
Quo multæ magnæque *ſecantur* judice lites?
Quo res ſponſore, et quo cauſæ teſte tenentur.
HOR. Sed videt hunc domus et vicinia tota
Introſus turpem, ſpecioſum pelle decorâ.

But

But this learned judge proceeds "another "rule has been laid down, which I take in "every cauſe to be unjuſt and contrary to "law; this is that, in civil actions juries are "inflicting of fines, and not giving of da-"mages. That is not the rule; for the da-"mages muſt be proportioned, to what the "plaintiff ought to receive. It is not that "the plaintiff is to receive money, in the na-"ture of a fine. If a fine, the laws of Eng-"land would ſet it aſide; for the laws pro-"vide that no exceſſive fine ſhould be in-"flicted: whenever the paſſions of a jury "have carried them to exceſſive fines, they "have done wrong; and what ought to be "limited. If they are inflamed in publick "cauſes, they have meaſured wrong; for "the damage ſhould be according to the in-"jury, the plaintiff has received; that is the "meaſure of damages."

A jury, I know, cannot, in Lord Manſfield's opinion, be guilty of greater indecorum and injuſtice, than by encroaching on the province

province of the court; in whoſe breaſt the formality of inflicting fines is repoſed. But it is contrary to all ſenſe and reaſon, as well as fact, to pretend that the damages, in caſes of this nature, are not intended, by law, to operate, as fines, upon the delinquent,* as well as a compenſation to the the party injured. The contending counſel, therefore, as well as the judge, were

* Judge Blackſtone's obſervations on *fines*, will equally apply to *damages*. "The *quantum*, in particular, "ſays he, of pecuniary fines neither can, nor ought "to, be aſcertained by any invariable law. The va-"lue of money itſelf changes from a thouſand cauſes; "and, at all events, what is ruin to one man's fortune, "may be matter of indifference to another's. Thus the "law of the twelve tables at Rome fined every perſon, "that ſtruck another, five and twenty *denarii*: this, in "the more opulent days of the empire, grew to be a "puniſhment of ſo little conſideration, that Aulus Gelius "tells a ſtory of one Lucius Naratius, who made it his "diverſion to give a blow to whomever he pleaſed, and "then tender them the legal forfeiture."

In the ſame manner might not a libidinous prince of the blood, or opulent peer, go about, like another Lucius Netius, wantonly ſeducing men's wives and daughters, at pleaſure, regardleſs of the conſequences; if the damages, given in actions of this kind, were not in ſome degree proportioned to their fortunes?

equally

equally miſemployed (I wiſh I could ſay miſtaken) in maintaining that the conduct, ſituation, or circumſtances of either plaintiff, or defendant ſhould *excluſively* determine the meaſure of damages. Nothing can be more clear, according to the general ideas of law and juſtice, than that the conduct, ſituation and circumſtances of *both* ought to be included in the conſideration of damages. And, theſe being duly conſidered, let the impartial reader lay his hand upon his heart, and declare, in his conſcience, if he thinks the receiving ten thouſand pounds a proper reparation for the plaintiff, or the paying that ſum a due puniſhment for the defendant; conſidering that the plaintiff was a peer of Great-Britain, actually poſſeſſed of a noble eſtate; and the defendant a prince of the blood in poſſeſſion of a royal fortune, annexed to the preſumptive uſe of all the intereſt and influence of the crown. Setting aſide the little quirks and quibbles of law, I put the queſtion home, not only to the Britiſh peerage, many of whoſe families had the point of honour to

ſupport

ſupport before the reigning family on the throne was known amongſt us;* but alſo to the breaſt of every man of ſenſe and ſpirit, of every rank and condition of life, throughout the kingdom; to every honeſt man, married or ſingle, in the whole Britiſh dominions. I know they feel a ſympathy for the private injury; they glow with reſentment at ſuch a palpable evaſion of public juſtice!

But our Juſtinian again proceeds "I will "mention ſome circumſtances, which ſhew "the meaſure of damages, the plaintiff ought "to receive. A few years ago an action "was tried here for criminal converſation; "the fact was plainly proved; but it came "out, in the evidence, that the plaintiff "knew of the trap laid for the man by his

* Of the Groſvenor family in particular it may be obſerved that, it is lineally deſcended from Hugh Lupus the firſt Earl of Cheſter; to which title, if birth, fortune and loyalty were to take place in advancements in the ſcale of the peerage, the preſent Lord Groſvenor might have juſtly pretended.

"wife:

"wife: he aſſiſted in it; he encouraged his "wife, in doing it; with a view to catch "him in it; and with a view to make a "pecuniary demand. In that cauſe the jury "did, with my approbation and direction, "not find a verdict for the plaintiff, but for "the defendant. I have conſulted the judges "upon that, and it has been approved in-"ſuch caſe; if the plaintiff by ſuch a trap "draws a man in, though the crime before "God is the ſame, he is not to recover da-"mages; that did happen here, and a verdict, "perfectly agreeable to my ſentiments, was "given."

The learned judge ſeems to compliment himſelf here upon an inſtance of peculiar penetration, without ſufficient grounds. The Julian law, long ſince, provided a remedy, in the caſe he points out. That law, inſtituted by Auguſtus, who had the misfortune to ſee it executed in the perſons of his own children, made adultery a ſignal and public crime.

crime. But where the husband made a trade of his wife's infamy, or where, having been an eye-witness to her shame, he endured it patiently; it provided a punishment both for the husband and wife. *

But wherefore is this odious instance adduced in the present case? bears it any relation or similitude to the circumstances of the trial before us? where is the man, though a lawyer, who will dare to insinuate that Lord Grosvenor did ever, in the least, in the most distant, degree, give countenance to the dishonour of his wife, or that it was possible for him to do it from the motives alledged? No. The instance was brought to give consequence and plausibility to the charge of the court; but with what propriety? It is indeed professedly brought "to shew the measure of the damages the plaintiff ought to "receive." But how does it apply? For my

* The same was provided by the laws of Justinian.

part

part I can make no manner of application whatever. If Lord Grosvenor had, as the eloquent judge most happily and elegantly expresses it, *laid a trap* for his Royal Highness; there had been some kind of propriety in this part of his charge; but, as it was notoriously otherwise, as it was not, I will venture to say again, it could not be, as it is here invidiously insinuated, such insinuation has all the appearance of a trap inadvertently laid for the jury.*

This I think is plain, from its being seemingly made use of in favour of the plaintiff, for want of grounds to use it against him. It is made use of, to introduce the plea of recrimination and the alleviation of damages, founded upon it; with the greater appearance of candour and impartiality.

* I say *inadvertently:* for, whatever art, or even partiality to his royal friend the defendant, might be imputed to this oracle of the law, I must not seem to insinuate, that so upright a judge swerved wilfully from the rule of right, in the manufacture and delivery of this curious charge: but *humanum est errare*; the best may sometimes err, without any impeachment of their integrity.

It is with the utmoſt appearance of both, that his Lordſhip expatiates againſt the plea of recrimination, being a bar to the action. But who inſiſted on it? Mr. Dunning indeed does juſt mention that he *hopes* the jury will conſider it as a reaſon, for not giving a verdict for the plaintiff. He tells them that he is *commanded*, and that thence it his *duty*, to *pray*, that they will give a verdict for the defendant; but he does not inſiſt on it, on any principle of law or juſtice; as it is to be preſumed, indeed it is well known, he would have done, had either juſtice or law been on his ſide.——But hear the judge himſelf, on this ſubject of recrimination. "Another "thing I will now take notice of; which is "what has happened to-day, regarding what "the plaintiff ought to receive; they have "this day, without objection, for they could "not object, let the defendant go into a recri-"mination; to ſhew that the plaintiff had "been falſe to his matrimonial vow. As the "damages are to ariſe from the tranſactions, "of the defendant, it is nothing what the

plaintiff's

" plaintiff's behaviour is; if it was criminal,
" no behaviour of the plaintiff could go to
" excuſe them, for what they have done cri-
" minally: but, if the plaintiff is under the
" ſame circumſtances of behaviour with his
" wife, if the fact is made out, you will
" conſider what to give him for the injury
" which he complains to have ſuſtained: and
" therefore I will take a circumſtance, which
" has always been gone into in the extenuation
" or aggravation; that is the nature of the ſe-
" duction. If the defendant, making uſe
" of the friendſhip of the huſband, under this
" friendſhip and his hoſpitality, as ſome caſes
" have been; or, where they have been living
" in the houſe, making uſe of that friendſhip
" and the opportunities of converſing with
" his wife; whom the huſband leaves in
" charge of his houſe, and abuſes that friend-
" ſhip, honour and hoſpitality, or ſtanding
" in any relationſhip to the plaintiff, the
" meaſure of damages would certainly increaſe.
" If a ſervant or a brother make uſe of the in-
" troduction, that gives ſuch opportunities,

"the law is very ſtrict. I don't know of a "caſe alluded to ſo late as Chief Juſtice Lee. "I know, in Queen Ann, the caſe of Mr. "Dormer, damages were given for a ſervant "violating his maſter's bed, lying in the houſe, "and therefore the uſe of damages, being "what the plaintiff ought to receive, and "whether the defendant be rich or poor, it "is the ſame thing, as to the meaſure of da-"mages. If the defendant is poor, if he has "incurred a juſt debt, he ought to pay and "make ſatisfaction. If it is the caſe with "a very poor perſon, he is liable to have his "body taken in execution; it is no excuſe "for a poor man, but ſtill it entitles the other "to indemnification; if it was not ſo, a poor "man would have little riſque, and the rich "would be puniſhed moſt ſeverely. But, "whether the defendant is rich or poor "that is not to meaſure the damages; it is "in the caſe of a fine, but not in point of da-"mages. That is to be meaſured upon all "the circumſtances of aggravation or extenu-"ation ariſing out of the cauſe."

I have

I have already ſufficiently explained the variable *nature of the cauſe*. I have ſhewn that the diſtinction, affected to be made between fines and damages, is merely nominal; a diſtinction without a difference! I have ſhewn that the caſe is widely different, when the parties are of high or low rank, rich or poor: I have not indeed accounted for that mortal antipathy, which his Lordſhip entertains againſt poverty and perſons in a low ſtation. I ſuppoſe it may be imputed to the ſame motives, as his attachment to wealth, to princes of the blood, and other perſonages in a high ſtation. But the rich and powerful have ſo many advantages, both moral and political, over the reſt of mankind, that a judge of any humanity, not abſolutely inflexible, would rather wiſh to give the adminiſtration of the laws a turn in favour of the poor, than the rich. In conceiving them both on a footing with reſpect to damages, in cauſes of this kind, I have ſhewed that the poor muſt of neceſſity be ſeverely puniſhed, while the rich might indulge their profligacy with impu-

nity.* His Lordſhip, on the other hand, ſeems terribly apprehenſive that the poor ſhould run little riſque, and the rich be puniſhed ſeverely. "If the defendant be poor and has incurred a juſt debt," ſays his Lordſhip, "he ought to pay and make ſatisfaction." What if misfortune or phyſical neceſſity hath put it out of his power? "He is liable to have his body taken in execution." He is ſo, by the practice of the lawyers; but it is doubtful whether it be ſo by law. Yet, if he were; what is this to the purpoſe? The matter in queſtion is no civil action for debt; the damages are confeſſedly to ariſe from the *criminal* tranſaction of the defendant; which no ſimilar criminality of the plaintiff confeſſedly can excuſe.

As to the local and adventitious circumſtances, his Lordſhip mentioned of aggravation or extenuation attending the ſeduction,

* I have alſo obſerved that the ill-conſequences of female ſeduction are much more to be apprehended from the higher than the lower orders of people.

they

they are equally foreign to the preſent caſe. His Royal Highneſs was neither Lord Groſvenor's relation, gueſt, friend nor ſervant: but there were other liberal and reſpectable relations, in which I have obſerved the families, both of his Lordſhip and his Lady ſtood to the royal family; which, as they ought to have been their ſecurity againſt ſuch ſeductive attempts, ought highly to aggravate the damages for ſuch attempts being actually carried into execution.

But, to give a farther ſpecimen of the ſtudied artifice and incoherency of this famous charge. "I have turned it, in my mind formerly, and "I have talked with others upon it, when it "firſt occurred to me, whether a doubt might "not be made, if recrimination ſhould be a bar "to an action of this kind; recrimination, the "eccleſiaſtical law makes a bar. There is no "difference between adultery of the huſband "and wife in point of law, for women may "have a divorce for adultery from a huſband, "in the eccleſiaſtical court, as well as the huſ-

"band a divorce from the wife; but if one
"ſues for a divorce, and the other recrimi-
"nates, by the rule of the eccleſiaſtical law,
"no divorce can be given; they are both
"equally guilty, and the law does not in-
"terpoſe. I am of opinion againſt it, in
"this action it cannot be a bar, for though
"the plaintiff may have behaved in this
"manner, it is between him and the perſon
"whom he has had criminal converſation
"with, and it is not a bar to his recovery
"againſt the defendant. I ſtill think that
"the huſband drawing a man into doing the
"fact, is in fact a bar, there I am clear: but
"in this caſe, it is my opinion, it is no bar,
"therefore it goes to damages only. And
"as to damages, it depends upon the evidence
"of the fact, for if the fact is proved, that
"the huſband has likewiſe taken the ſame
"liberty, to be ſure it goes a great way with
"regard to the injury he complains of loſing
"the comfort and ſociety of his wife."

The partiality, which this penetrating judge, on all occaſions, manifeſts for the maxims

maxims of the civil and canon law, is notorious; but as it is univerſally allowed, among municipal lawyers, that both the civil and canon laws in England, are ſubordinate to the common and ſtatute laws, it is with very little juſtice, or propriety, the practice of the eccleſiaſtical courts is here quoted, to direct or influence the judgement of an Engliſh jury.

I am not to learn that, according to the preſent practice of our eccleſiaſtical courts, in caſes of divorce for adultery, if the party accuſed ſhall prove that the accuſer hath alſo commited adultery,* ſuch proof is held a compenſation for the crime of the accuſed, and the accuſer fails of courſe in his ſuit. But, at the ſame time, I know too, that it is totally contrary to the practice of the civil and canon law in other proteſtant countries, as well as at the time of the reformation in England. A di-

* Or even fornication, which our modern practice has abſurdly confounded with adultery, contrary to the ſenſe and ſpirit of the canons, and the ſcriptures, or divine law, on which the eccleſiaſtical law is founded.

vorce

vorce for adultery was then granted *a vinculo matrimonii*, from the bonds of matrimony; and it was the opinion of the church of England, at the commencement of the reign of Queen Elizabeth, that, after a divorce for adultery, the parties might marry again. It is true, that the deſpotic tribunal, the *ſtar-chamber*, whoſe very name is odious to the ears of a free-born Engliſhman, did reverſe this opinion. That arbitrary and high-flown prelate, arch-biſhop Bancroft, with the conſent of the clergy, got it there determined that adultery was only a cauſe of divorce, *a menſa et thoro*, from bed and board.

But, what was this leſs than acting againſt the ſpirit, reverſing the very principles, of the reformation; and recurring back again to the uſages and practices of popery? It is indeed remarkable that Engliſhmen talk ſometimes as ignorantly of their *religious* as of their *civil* liberty, in extravagantly boaſting of the effects of the reformation.

Had

Had indeed the *reformatio legum*, projected in the reign of Henry the eighth, been carried into execution, by any of his ſucceſſors, a more complete reformation would have taken place in England, as it did in Holland, and other proteſtant countries. But as it is, the reformation hath but imperfectly entered into the conſtitution of the church of England, and the inſtitutes of our eccleſiaſtical law: there having been few, if any, ſtatutes ſince made reſpecting popery, in which the ſaving of the eccleſiaſtical juriſdiction is not eſpecially provided for. It is indeed expreſſly mentioned, in moſt of them, that nothing therein ſhall take away, or abridge, the authority or juriſdiction of eccleſiaſtical cenſures; but that the archbiſhops, biſhops, and other eccleſiaſtical judges, may proceed as before ſuch laws were enacted. What is this but carefully raking up the embers, and moſt ſuperſtitiouſly preſerving the idolatrous relicts, of popery?

The above practice is plainly the effect of the advantage, which the prelate and prieſts above

above mentioned took, of the failure of the intended reformation of the church-laws, to eſtabliſh in the *ſtar-chamber* a doctrine diametrically oppoſite to the opinion of the learned and pious fathers of the reformation. Martin Bucer, in the tract he addreſſed to Edward the ſixth, on this ſubject, employs a whole chapter * to prove from the beſt authorities as well of the primitive fathers, as of the doctrines of the Chriſtian church, that a manifeſt adultreſs ought to be divorced, and cannot lawfully be retained in marriage by a chriſtian.

If law, ſays that great luminary of Engliſh literature, Milton, "aim at the firm eſta-"bliſhment and preſervation of matrimonial "faith, we know that cannot thrive under "violent means, but is the more violated. "It is not when two, unfortunately met, are "by the canon forced to draw in that yoke, "an unmerciful day's work of ſorrow, till "death unharneſs 'em, that then the law keeps

* Chap. xxxii.

"mar-

" marriage moſt unviolated and unbroken:
" but when the law takes order that marriage
" be accountant and reſponſible to perform that
" ſociety, whether it be religious, civil, or
" corporal, which may be conſcionably re-
" quired and claimed therein, or elſe to be
" diſſolved, if it cannot be undergone; this is
" to make marriage moſt indiſſoluble, by ma-
" king it a juſt and equal dealer, a performer
" of thoſe due helps which inſtituted the co-
" venant; it being otherwiſe a moſt unjuſt con-
" tract, and no more to be maintained under
" tuition of the law than the *vileſt fraud*,
" or *cheat*, or *theft* that may be commited.
" The law can to no rational purpoſe for-
" bid divorce; it can only take care that the
" conditions of divorce be not injurious."

For this, as a real ſtate of the caſe, he appeals to the learned Selden's tract on the law of nature and nations; a work, ſays he, " more uſeful and more worthy to be peruſed " by whoſoever ſtudies to be a great man " in wiſdom, equity, and juſtice, than all " thoſe *decretals and ſumleſs ſums*, which the

" *ponti-*

" *pontifical clerks* have doted on, ever ſince
" that unfortunate mother famouſly ſinned
" thrice, and died impenitent of her bringing
" into the world thoſe two miſbegotten in-
" fants, and forever infants, Lombard and Gra-
" tian; him the compiler of canon iniquity,
" t'other the Tubal Cain of ſcholaſtick ſophiſ-
" try, whoſe over-ſpreading barbariſm hath
" not only infuſed their own baſtardy upon the
" fruitfulleſt part of humane learning, but ob-
" ſcured the clear light of nature and of na-
" tions, by their calumnious dunceries!"

Now, if theſe authorities, ſtrengthened by thoſe of the moſt rigid divines and moraliſts among the firſt reformers, ſuch as Wickliff, Luther, Melancton, Eraſmus, and a long train of divines, civilians and canoniſts down to Grotius himſelf; I ſay, if theſe authorities will juſtify the ſetting aſide that of Juſtinian and the popiſh decretals, in favour of Valentinian and Theodoſius, ſupported by almoſt all the primitive fathers; the modern practice, of refuſing a divorce in caſes of adultery, muſt be allowed to be a barbarous

barous and oppreſſive inſtance of the remains of prieſtcraft and popery; the conſequence of an imperfect reformation.*

This argument may be carried ſtill farther, and the practice of admiting the plea of recrimination and of refuſing a complete divorce *a vinculo*, even in caſes of adultery, be proved totally inconſiſtent with the ſpirit and practice of the common and ſtatute law; by which the canon law ſhould be controuled.†

* Nor do the ancient authorities abovementioned want later confirmation, as to their juſtice and propriety. Even Blackſtone himſelf, in admitting that, tho' the canon law (which the common law moſt exceptionably follows only in this particular caſe) deems ſo highly and with ſuch myſterious reverence of the nuptial tie, that it will not allow it to be unlooſed for any cauſe whatever, which ariſes after the union is made; he yet plainly inſinuates that ſuch doctrine does not appear to him well grounded. "It is ſaid," proceeds this learned writer, "to be built on the di-"vine revealed law, tho' that expreſſly aſſigns incon-"nence, as a cauſe why a man may put away his wife "and marry another. *See Blackſtone's commentaries on the laws of England*, Book I. chap. xv.

† This indeed is the generally-received opinion; altho' it is whimſically obſervable that there is a difference between the opinions of our moſt approved lawyers even on

The

The *ſtar-chamber* whoſe deciſions, as I have obſerved, our eccleſiaſtical courts now follow in this particular, determined indeed that a man, divorced from his wife for incontinency on her part, ſhould not marry again: ſetting aſide, in the famous caſe of Foliambe, the ſecond marriage of a man ſo circumſtanced; which it declared void. But how does this practice agree with the common and ſtatute law? By the ſtatute 1 J. c. 11. Any perſon guilty of polygamy, or marrying a ſecond wife while the firſt be living, is deemed guilty of felony. In the ſame act, however, it is provided among other proviſos, that it ſhall not extend to any perſon,

this point. Burn lays it down as a certain and univerſal rule that the civil and canon law, in all caſes, is ſubordinate to the common and ſtatute law. This was the opinion alſo of Judge Hale and Lord Chief Juſtice Coke. Blackſtone, on the other hand, tells you that the common law follows the canon law in caſes of divorce for adultery; tho' he himſelf allows elſewhere, that it is beyond a doubt that the civil and canon laws, tho' admitted in ſome caſes by cuſtom in ſome courts, are only ſubordinate and *leges ſub graviori lege*. When doctors thus differ, it is not to be wondered at that inferior practitioners are ſo ready, on all occaſions to give, that opprobrious and illiberal toaſt, "the profitable uncertainty of the law!"

who

who ſhall be at the time of ſuch marriage divorced by any ſentence in the eccleſiaſtical court. Now the commentators, on this proviſo, all agree that the divorce therein intimated, cannot mean divorce *à vinculo matrimonii*; for then, without the aid of any proviſo, either party may freely marry; but it muſt be intended of divorces merely *a menſa et thoro.*

It is hence plain that the ſtatute law, by excepting perſons marrying under ſuch a predicament from the penalty inflicted on polygamy, tacitly admits of ſuch marriages; which is plainly incompatible with the ſtar-chamber deciſion above mentioned. To this may be added that in moſt caſes the common and ſtatute law of England conſider marriage, as Blackſtone has it, only as a civil contract or union.

Indeed the facility with which acts of parliament are obtained for divorces on the cenſures of the eccleſiaſtical court, is a plain

proof of the ſenſe of the legiſlature reſpecting their propriety; although it muſt be owned that the formality of obtaining ſuch acts of parliament on theſe occaſions, is a reſtraint upon the ſubject; which gives countenance to the difficulties, the canoniſts throw in the way of perſons ſuing out a divorce in the ſpiritual court. Theſe acts of parliament indeed put one in mind of the papal diſpenſations, that were granted with like facility, as ſalvos for the rigorous canons of the council of Trent, which prohibited divorce on any occaſion whatever.

It is ſenſibly enough obſerved, by an anonymous writer,* who ſeems nevertheleſs but little acquainted with the practice of the canon law in England, that, "according to "the ſpirit of the *canon law* (by ſome called "a diſgraceful veſtige of monkiſh barba-"riſm and popiſh tyranny) marriage is ſtill "held ſo religiouſly ſacramental as to be

* Editor of the depoſitions in the cauſe depending between Lord and Lady Groſvenor.

"indiſ-

"indiſſoluble, even for incontinence. The "wedded pair muſt ſtill, as Milton ſays, "ſpite of antipathy, fadge together." But "this, to the ſcandal of our laws," continues this writer "is not the caſe in any other "proteſtant country. And yet, as if we "were going to turn romaniſts, and devolve "again into a ſtate of ignorance and bar-"barity, we have lately ſeen the papal de-"ciſions, reſpecting the marriage of adul-"terers, and the *impedimentum criminis* of the "ſchools, receive the ſanction of a Britiſh "act of parliament. But, for heaven's ſake, "why not give a political toleration to a "perſonal attachment, when the ties are "diſſolved which rendered it criminal! It "is abſurd to ſuppoſe that ſuch an interdic-"tion will operate to the prevention of "adultery; or that a ſollicitude about fu-"ture rites of marriage will affect their pre-"ſent violation."

An Engliſhman and a proteſtant muſt be far from wiſhing to ſee any more exam-

ples of this kind. So far indeed muſt a conſcientious man, tenacious of civil and religious liberty, be from applauding theſe parliamentary conceſſions, in favour of popery, that he could rather wiſh to ſee a legiſlative reviſion of them, and a fair inveſtigation of the point; whether the legal abolition by ſtatute of that arbitrary tribunal, the *ſtar-chamber*, did not virtually annul both the precedents and practice of that court, as well reſpecting eccleſiaſtical as civil matters; in which caſe the matter of divorce would ſtand as it did juſt after the reformation, and agreeable to the opinion of the church of England, in the beginning of the reign of Elizabeth.*

* Dr. Burn indeed congratulates his contemporaries, and ſays, it is the glory of the preſent age that the conteſts between the courts of the common and the eccleſiaſtical law, regarding their reſpective juriſdictions have ſubſided. "Perſecution," ſays he, "hath de-"parted to its native hell; and fair benevolence hath "come down from heaven. The diſtinctions, which "were introduced during the plenitude of papal power, "have fallen away by degrees; and we ſhall naturally "recur to the ſtate wherein popery took us up: in "which there was no thwarting between the two ju-

But

But to return to the charge under conſideration. We will for once ſuppoſe the learned judge to be perfectly in the right, as to adultery's being equally criminal in the eye of the law, both in man and woman; and that the ſpiritual court judge as rightly in admiting the plea of female recrimination, as the grounds of refuſing a divorce; admiting this, I ſay, for the preſent, to what purpoſe is all this parade of ſeeming impartiality? As the judge was himſelf of opinion againſt ſuch plea being a bar to the action at law, of what uſe could be the introduction of it? It could evidently be of none, as Mr. Wedderburne, in his reply very ſenſibly and ſpiritedly obſerved, but to defame the plaintiff, and mitigate the damages to be paid by the defendant.

" riſdictions, but they were amicably conjoined, afford-
" ing mutual help and ornament to each other."

Doubtleſs this is a conſummation devoutly to be wiſhed: but before it is compleated, I conceive it will be neceſſary to make ſome eſſential alteration, or more properly ſpeaking, *reformation*, in the practice of the eccleſiaſtical courts reſpecting divorce,

The defamation was illiberal; I wiſh I could ſay illegal; and as to the recrimination, it ought to have had no effect whatever on the conſideration of damages. For, though as the judge moſt plauſibly remarks, if the fact is proved, viz. that the huſband has likewiſe taken the ſame liberty * as the wife, to be ſure it goes a great way with regard to the injury he complains of; yet it is alſo, as he at the ſame time juſtly obſerves, that, as to damages it depends on the evidence of the fact.

Now, I will take upon me to ſay that, the evidence, produced in court, to ſupport the plea of recrimination, proved nothing, that ought to have had the leaſt weight with a ſenſible and conſcientious jury. It was very truly obſerved by Mr. Wedderburne, that the only poſitive evidence, viz. that of Mrs. Bois-germain and Mrs. Howe, was un-

* It will be hereafter farther ſhewn that incontinence in the huſband and in the wife is not the ſame either in law or fact. It differs widely both in cauſe and conſequence: ſo that a huſband cannot poſſibly take the *ſame liberty*, as it is here called, with the wife as ſhe does with him.

ſupported

ſupported by any collateral and circumſtantial evidence, that might corroborate their aſſertions; which, had they been true, might have been eaſily procured. That eloquent pleader expatiated very properly on the danger and abſurdity of admitting ſuch evidence; which might be procured to blaſt the moſt reſpectable characters: but he might have added, to enforce his argument reſpecting the infamous character of the women, that they were by law not only incredible but incompetent. It is required of witneſſes that they be perſons of reputation and free from infamy of law and fact; that they be diſintereſted, and ſo not liable to the juſt ſuſpicion of partiality; that they be free from any juſt ſuſpicion of contrivance or conſpiracy, or any ſort of corruption or partiality. And alſo that their evidence be certain and poſitive, and not upon hearſay or the belief of other perſons. Nay Lord Coke expreſſly ſays that "a witneſs alledging his own infamy or turpitude is not to be heard."* If a wife be diſallowed, as in

* To this authority may be added that of Lord Raymond, who, in a ſimilar caſe of a woman's ſwearing to

ſome adjudged caſes ſhe has been, to be a witneſs to prove her huſband had no acceſs to her, in a caſe of baſtardy; ſhall a common ſtrumpet be admited a competent witneſs, to prove an act of adultery againſt a Britiſh peer, to whom ſhe did not, when pregnant, ſwear the child; which ſhe ſwears two years afterwards to have been the conſequence of ſuch act? Is not the abſurdity of admiting ſuch a witneſs to give her evidence on oath, on ſuch a trial, equal to the infamy of procuring her appearance in court? But to what will not hireling ſolicitors and courtly advocates, I will not ſay independent judges, deſcend; when they act under royal command, and the exculpation or defence of a prince of the blood is in queſtion? To Mr. Dunning's honour, he ſhewed a great reluctance to enter upon ſo illiberal a plea; though not much to his honour, it is ſaid, he declined undertaking the cauſe of the plaintiff; when, as a juſt compliment to his great abilities, a retaining fee was offered him. Mr. Wedderburne ac-

her own proſtitution, declared it was an odious piece of evidence and ought not to be heard.

quited

quited himſelf like an eloquent pleader; but I cannot help thinking that, as an able lawyer, he ſhould have excepted to the competency of ſuch witneſſes. For, though his exceptions might, and moſt probably would, have been over-ruled by the court; which is the ſole judge of the validity of ſuch exceptions; yet he would have more fully diſcharged his duty to his noble client; and the partiality, if there were any, in the bench, would have more evident.

Admiting, I ſay again, at preſent for argument's ſake, the plea of recrimination if well ſupported, to have had any force; no thing is more plain than that it was not ſupported by either credible or competent evidence; and therefore, as I have above hinted, it ought not to have been admited by the court, or to have had any weight with the jury.

As to the jury, indeed, I have given ſufficient reaſons for their being at a loſs to form either a proper judgement of the caſe, or of the damages they ought to have found. And yet I find they did not make this plea

their

their apology, for giving a verdict; which, it ſeems, ſome of them thought ſtood in need of apology. For it is well known that they frankly confeſſed, they were not very ſolicitous as to the *quantum* of damages they were to give the plaintiff; from a notion that a man of Lord Groſvenor's fortune could only require an honorary reparation; ſufficient to ſupport his ſuit in the commons for a divorce. To which notion they alſo added a patriotic ſuggeſtion, reſpecting the payment of ſuch damages by the defendant; conceiving, on ſome good grounds I ſuppoſe, that the money would be paid out of the treaſury; ſo that it would be impolitic and unjuſt to tax the already overburthened publick, to ſupport the extravagant and lawleſs pleaſures of a prince of the blood.

Suppoſing this to be really the caſe however, they ſhould have conſidered, whether it would not have been more juſt and politic, to put a check to ſuch extravagance by one verdict for conſiderable damages; than, by giving inconſiderable damages, to countenance

his

his future purſuit of ſuch lawleſs pleaſures. The ſum of ten, or even twenty thouſand pounds, which his Royal Highneſs's amour and trial, with their attendant circumſtances, have probably coſt the nation, may be placed to the account *of ſecret ſervice money*, or paſs muſter unſcrutinized among the debts of the civil liſt. But had the jury found, as it is conceived they ought to have done, the whole damages laid in the declaration, the ſum of an hundred thouſand pounds would have been too capital to be ſo eaſily overlooked; or, if it might have been overlooked for once, it would cauſe too fatal a derangement in the civil-liſt accounts, to countenance a repetition of it. The majority in parliament, however obliging and courtly at preſent, would ſoon be weary of paying the debts on the civil liſt without enquiry, if ſuch reaſons were given to ſuſpect their liberal grants were employed in the ſeduction of their wives and daughters, to the diſhonour of themſelves and families.

It may ſeem unneceſſary to make any remarks on the nature of the evidence, admitted on this trial in behalf of the plaintiff; becauſe, as I have already obſerved, if the jury did not think it amounted to a proof of criminal converſation between the parties, they ought not to have given a verdict for the plaintiff at all. For, notwithſtanding the defendant's council endeavoured to ſet aſide the idea of its being a criminal cauſe, the action being as they ſaid only "a claim for a civil reparation, for a civil injury," whence the jury might be led to conceive that, even an attempt at ſeduction was an injury for which his Lordſhip might claim reparation; yet in finding this, they would have been miſtaken. This action is profeſſedly an action for criminal converſation; and is therefore a criminal cauſe, though it be not proſecuted by way of indictment or information; but in the way of civil action for damages. It is the only method, as Mr. Wedderburne juſtly obſerves, the law hath provided for proceeding againſt ſuch crimes; the damages,

though

though not formally a fine, in effect operating, and intended to operate, as ſuch on the criminal.*

If the fact, therefore, were not fully proved to the ſatisfaction of the jury, they ought not to have found a verdict for the plaintiff. For this reaſon, I ſay, I ſhould make no remarks on the nature of the plaintiff's evidence, had not his learned advocate, Mr. Wedderburne, gone out of his way, in ſupporting the weight of circumſtantial evidence, to invalidate, what is uſually called ſubſtantial and poſitive. This is frequently the caſe with pleaders of leſs experience; who, for fear of not proving enough, generally prove a great deal too much, or at leaſt more than is neceſſary. *Ex Scylla in Charybdim*; by avoiding one extreme, they run into another. I believe, ſays Mr. Wedderburne, "it will not be diſputed that, in

* As well as a compenſation to the party injured; the *quantum* of ſuch damages ſhould therefore, as before obſerved, be proportioned to the rank and fortune *both of plaintiff and defendant*; as is expreſsly declared by Blackſtone. *See Comment, on the laws of England.* Book III. chap. 8.

cauſes

" cauſes like this, nothing leſs than ocular wit-
" neſſes to direct facts can be admited; no ſuch
" rule has or can prevail in this cauſe, as
" in every other cauſe. A ſtrong ſubſtan-
" tial proof operates with more force than it
" can in any caſe, if parties are wicked
" enough to make up evidence to contra-
" dict the truth; but in this caſe, there is
" more in the compaſs of proof than proba-
" ble evidence; if direct evidence was to be
" offered to you, if witneſſes were to ſay they
" ſaw them in bed together, that would leave
" ſomething to be inferred by the jury, and
" that inference may be as well made of other
" circumſtances as of that ſingle circumſtance,
" as whether or not it was impoſſible that it
" could happen in any other ſituation than
" between ſheets. If you were to hear po-
" ſitive witneſſes ſay, they had ſeen the par-
" ties, in bed together, I ſhould think if
" ſuch evidence was offered it would be a
" very ſuſpicious evidence. In one remark-
" able cauſe, the ſpiritual court did deem it
" exceedingly ſuſpicious, and would not di-

" vorce

"vorce the parties: becauſe the parties are "never ſo indiſcreet, but prudence may pre-"ſerve them from being found in the fact."

I cannot but think the arguments, of this expert advocate unneceſſary to his cauſe. There is one pertinent obſervation, however, may be made on them, which is, that, if the ſpiritual court really does deem, as he ſays, the poſitive evidence of witneſſes, ſeeing the parties in bed together exceedingly ſuſpicious, meaning doubtful; it is whimſical to think what effect the depoſitions we ſhall hereafter conſider will have on its canonical incredulity. It may poſſibly ſpiritualize ſo ſkeptically on the evidence on both ſides, as to pronounce my Lady and his Lordſhip equally immaculate, and diſmiſs both as harmleſs innocents, fit to live in holy matrimony together!

But not to be ludicrous on ſo important and ſerious an occaſion. In Holland and other

other countries where adultery * is purſued by penal laws, the ſight of a man and woman, in bed together, (even though it be there cuſtomary to go to bed with almoſt as many cloaths on, as they wear when up ‡) is judged ſufficient evidence of the preciſe act, as Lord Mansfield calls it. The learned counſel ſeemed alſo to forget that Wood has laid it down in his inſtitutes, from the Juſtinian code,† that when a man and a woman are ſeen in bed together this is allowed to be ſufficient evidence, for ſuch crimes, ſays he, will ſcarce admit of other proof. But the ſpiritual court, Mr. Wedderburne ſays, would

* Or, more properly ſpeaking, the guilt of *ſtuprum* or fornication, for it is the men chiefly who are thus criminally proſecuted, for the ſake of commutation. Now adultery being the carnal knowledge of another man's wife, a married man by lying only with a ſingle woman, is not guilty of adultery, but only fornication. But of this more particularly hereafter.

‡ So that, though the *ſolus cum ſola* may be evident, the *nudus cum nuda*, required by the civilians, is never apparent.

† Wood Inſt. Book III. chap. x.

not

not divorce the parties in the cauſe hinted at, for this very reaſon, viz. becauſe ſuch parties are never ſo indiſcreet, but prudence may preſerve them from being found in the fact.

This, to be ſure, is the way of reaſoning Iago affects in the play.

— — How ſatisfied, my lord?
Would you be ſuperviſor, groſſly gape on?
Behold her tupp'd?
It were a tedious difficulty, I think
To bring 'em to that proſpect: damn them then
If ever mortal eyes do ſee them bolſter,
More than their own. — —
It is impoſſible you ſhould ſee this,
Were they as prime as goats, as hot as monkeys,
As ſalt as wolves in pride, and fools as groſs
As ignorance made drunk!

But Iago was no lawyer; and, if he had been ſuch, he was knowingly inſiſting on a falſe plea. The truth is, that indiſcretion infers a want of prudence; at leaſt, when

people are indiſcreet they have ſeldom their prudence at command; and that this was moſt egregiouſly the caſe with his Royal Highneſs and Lady Groſvenor, ſufficiently appears by the depoſitions of the Counteſs Denhoff and Mrs. Reda, the principal confidantes of their amour.

But before we proceed to the depoſitions in this particular cauſe, I ſhall enter into an inveſtigation of the nature of the crime commonly called adultery, and enquire how far the modern practice of our ſpiritual courts, in granting or refuſing divorces under pretence of that crime, is conformable to the canons of the Chriſtian church and the laws of England.

There is hardly a word in our language of more vague and indeterminate import, than that of adultery. Our moſt accurate lexicographers have but ill explained it, as a word; nor have our lawyers defined it, as a technical term, with better ſucceſs.

Adultery, ſays the late learned editor of of Bailey,* "is properly the ſin of incontinency in married perſons defiling the marriage-bed; it is adultery, if but one of them be married in the married perſon, fornication in the unmarried."†

Adultery, ſays Chambers, *adulterium* (in ancient law-books called advowtry) "is a crime commited by married perſons againſt the faith pledged to each other in marriage, by having carnal commerce with ſome other; or

* I do not mention Johnſon, and that merely becauſe, like an idler he took almoſt every thing upon truſt; indeed I do not know a more ſtriking example of the truth of the old Greek proverb, "a great book is a great evil," than Johnſon's dictionary.

† See Bailey's dictionary folio (edited by Dr. Scott) under the word *adultery*; alſo *fornication*, under which latter head, we have the following remark. "*Query*, "whether fornication in the ſcripture uſe of the word "is not diſtinct from concubinage; and, if ſo, whether "our modern acceptation of the word gives a juſt idea "of it? And, by the way, if adultery, in the ſcripture uſe, means only the cohabitation with another's "wife, *query* if the modern uſe of this word alſo ſhould "not be reconſidered?"

Now

or even by a perſon not married by having to do with another that is."

It is very plain that theſe lexicographers, by making uſe of the word *perſon* and *one* in the epicene gender, have given but a very imperfect definition of the term. The firſt ſays that, "if one of the parties concerned be "married and the other not, it is adultery "in the married perſon, and fornication only "in the perſon unmarried." But this differs with the ſex of the party; for, though an unmarried woman, lie with whom ſhe will, be not an adultereſs, yet an unmarried man, lying with a married woman, is univerſally allowed to be an adulterer.

Now, that the *ſcripture uſe* of theſe words ſhould determine their ſenſe, in the *ſpiritual court*, is evident; becauſe the deciſions of that court are determined by the canons of the church, confeſſedly founded on the divine law, as it is laid down in the Scriptures; according to the Decrees, *Divinum jus in ſcripturis divinis habemus.* Diſtinct 8.

Again,

Again, the latter ſays, "an unmarried "perſon, having carnal commerce with ano-"ther that is married, is guilty of adultery." Bnt this holds good only when the unmarried perſon is the *male*; for, to reverſe the above propoſition, though an *unmarried man* lying with a *married woman* be allowedly an *adulterer*; an *unmarried woman*, lie with whom ſhe will, is never ſtigmatized as an *adultereſs*. A *married woman* only can be an *adultereſs*. The commiſſion of the crime of adultery abſolutely requires, that the *female party* ſhould be *a wife*. And hence it is evident, that, as a ſingle woman lying with a married man is no adultereſs, ſo a married man lying with a ſingle woman is no adulterer. There is no *wife* criminally concerned in the caſe.

Our lawyers, as I obſerved, are as palpably defective in their definitions as the lexicographers. Wood, in his Civil inſtitute, gives

us the following definition and illuſtration; for which he refers to the digeſt of Juſtinian. "Adultery (*adulterium, quaſi ad alterius thorum*, or *ad alteram ire**) is a carnal knowledge of another man's wife. So that a wife only can be guilty of adultery; and a married man, that lies with a ſingle woman, is not guilty of that crime. His guilt is only *ſtuprum*, becauſe in him there is no danger of a confuſion in families; no baſtardy to inherit or rob the legitimate children."†

What ſtrange inaccuracy! "Adultery is the carnal knowledge of another man's wife, ſo that a wife only can be guilty of adultery!" how can a wife only, or how can ſhe even at all, have carnal knowledge of another man's wife? This blunder, however, the author obviates, by his ſubſequent explana-

* He might have added that an adulterer is alſo called in latin *Mœchus*, from Μοιχὸς, ex μὴ & οἶχος, quod à domo ſua averſus aliò ſe convertat.

† Wood Inſt. Book III. chap. x.

"tion

tion; ſhewing that he meant to ſay, that *no woman* but a *wife* can be guilty of *adultery*; and that *no man* is guilty of it, who does *not lie* with *another man's wife*.

From getting rid of this blunder, our learned lawyer proceeds nevertheleſs to fall into another. "By the divine law," ſays he, "adultery "is every violation of the conjugal rites and "marriage-bed, commited either by the man "or woman. LEV. 20. 10. And ſo it is "by the canons, 32. 4. C. *Nemo. &c.*" Let us turn, now, to the text to which we are referred. "And the man that commiteth adul-"tery with another man's wife, even he "that commiteth adultery with his neigh-"bour's wife, the adulterer and adultereſs "ſhall be put to death.

What do we find here, that ſhews the divine or canon law to be different from the civil? It expreſſly ſpeaks of the crime of lying with another man's wife. Why then is it ſuggeſted that any other violation of the conjugal rites, is adultery?

It is certainly a breach of the conjugal rites and of the faith pledged in marriage, if the huſband turn away his wife without juſt cauſe; refuſing to love, to cheriſh and to hold her, for better for worſe, in ſickneſs and in health, as he promiſes. But this he may do, without violating the marriage-bed; without being guilty of adultery, or even fornication. On the other hand, he may be guilty of fornication, without any violation of conjugal rites, or breach of his matrimonial vow; as I ſhall preſently ſhew.

But here it muſt be underſtood, that I ſpeak only of perſons married to each other, according to the rites, and ceremonies, of the church of England; and not of perſons of the Romiſh religion, or other perſuaſions. At the ſame time we are to take with us, that the canons of the church, by which the eccleſiaſtical courts are in theſe caſes governed, are no farther binding in thoſe courts, nor can ſuch canons lawfully influence their deciſions

ciſions farther, than they are ſupported by the divine law, as it is laid down in the holy ſcriptures. It is here alſo to be obſerved that though the courts-chriſtian are governed by the canons of the church, which are founded on ſcripture, the ſcriptures do not, as the canoniſts affect to believe,* contain ſufficient rules to decide all controverſies relative to matters agitated in thoſe courts.

The ſpiritual courts, in this proteſtant country, are to judge by the canons of the chriſtian church, as adopted by the church of England; not by the canons of the church of Rome; which the former hath retained only ſo far as

* Thus in the caſe of divorce between the earl and counteſs of Eſſex, heard before the king's delegates in the 11th year of James I. The archbiſhop of Canterbury began his arguments by ſaying "in as much as we firmly believe, that the ſcripture doth directly, or by conſequence, contain in it ſufficient matter to decide all controverſies, eſpecially in things appertaining to the church, as that marriage among chriſtians can be no leſs accounted than a ſacred thing, as being inſtituted by God himſelf in paradiſe, honoured by the preſence of our Saviour himſelf, declared by St. Paul to be a ſign of the ſpiritual conjunctions between Chriſt and church."

In

as thoſe canons are conſiſtent with the holy ſcriptures.

Taking things in this light, the whole practice of the ſpiritual courts, in refuſing a divorce *a vinculo*, in caſes of adultery, is illegal, antichriſtian and oppreſſive. Nor is this any novel doctrine, calculated for the preſent purpoſe? Adultery was held a ſufficient cauſe for divorce *a vinculo*, in the times of Henry VIII. Edward VI. and in the beginning of the reign of Elizabeth. In the debates of the houſe of lords, on the celebrated caſe of Lord Roſs, Biſhop Cozens proved, beyond a doubt, on the beſt authorities of the ſcriptures, the primitive fathers and councils, that adultery works a diſſolution of marriage between chriſtians. His words are remark-

In reply to this, his grace's preamble, however, the king's anſwer declared the opinion to be puritanical and prepoſterous. "The orthodox propoſition," ſays he, "is, that the ſcripture doth directly, or by conſequence, contain in it ſufficient matter to decide all controverſies in points of *faith* and *ſalvation*; of which ſort MARRIAGE *cannot* be accounted for one."

able,

able. "The firſt inſtitution of marriage that the parties may be *one fleſh*, is by adultery diſſolved; when the adultereſs makes herſelf *one fleſh* with another man, and thereby diſſolves the firſt bond of her marriage."

To this purpoſe the learned biſhop quotes, among other reſpectable authorities, the argument of Ameſius: which concludes thus. "By adultery the very eſſence of the contract is directly violated; now the contract ceaſing, the bond depending on the contract ceaſes of courſe. It is againſt all reaſon that the matrimonial duties ſhould be for ever taken away, yet the bond or obligation to thoſe duties ſhould continue."

Serjeant Wright, in his pleadings before the commons in the duke of Norfolk's caſe, caſt a very bold and juſt reflection on this practice of the ſpiritual court. "There is an exception to the general councils and canons;

nons, in the refuſal of a divorce *a vinculo*, in caſes of adultery; Mr. Speaker, I ſay it is an eccleſiaſtical conſtitution which is contrary to the law of God."

By what law then, are our eccleſiaſtical courts in England governed? By the canons of the church? What church? the church of Rome or the church of England? It cannot be the latter; for, to uſe the words of the learned biſhop above mentioned, "I know not why they ſhould be called the church of England, that join with the council of Trent, and plead ſo much to uphold it rather than others, who join with all the reformed churches, and plead againſt that canon of the church of Rome; which hath laid an Anathema upon us, if we do not agree with them."

I ſhall not trouble the reader therefore with inſignificant authorities from the popiſh canons. With proteſtants of the church of England, marriage *is no ſacrament*: it is merely

merely *a civil contract*; * the terms of which are preſcribed in the ritual; which is confirmed by act of parliament; and, though the meaning of theſe terms is to be explained in a ſcriptural ſenſe; yet that ſenſe is to be determined by the divine law, as laid down in the ſcriptures; and not by the canon laws, derived from popiſh councils or papal decrees.

Before I proceed, however, to conſider the terms of the matrimonial contract, as entered into by the members of the church of England, I ſhall endeavour to elucidate a point, which ſeems to have perplexed ſome of our ableſt civilians, reſpecting the nature and puniſhment of adultery.

* As it is in other proteſtant countries. In Holland the ceremony of marriage is not celebrated merely by the prieſt, but by the magiſtrate; as it was in England, during the inter-regnum, by the juſtices of the peace; which marriages were confirmed by act of parliament on the reſtoration.

Having

Having explained, what is meant by the crime of adultery; the author of Wood's inſtitute proceeds to enumerate the ſeveral puniſhments, that have been inflicted on ſuch criminals in different ages and countries. He obſerves that, by the conſtitution of Conſtantine, it was puniſhed with death; agreeable to the Levitical law; and for a good reaſon, continues he, "becauſe it might include the "worſt kind of robbery, that of depriving "innocent children of their lawful inheri-"tance."

"But it is not made death, in the wife, "by the novels of Juſtinian. She only "undergoes a ſcourging and the loſs of her "dower; and if afterwards ſhe is confined "to a monaſtery, the huſband hath liberty "to receive his wife at any time within two "years: but by that law it is death in the "huſband."*

On the apparent incompatibility of mildneſs and ſeverity contained in this law,

* See Wood Inſt. Book III. chap. x.

our

our modern inſtitutor has the following remark.

"The reaſon of this I cannot underſtand. "It is ſaid that Theodora, the wife of Juſti-"nian, was the contriver of it. Some pre-"tend that allowances ought to be made for "the weakneſs of the ſex."

But, granting this effect of female influence on the author of the novels; fickle as he was in the light of a lawgiver, he could never be ſo favourable to the fair ſex and cruel to his own, as to puniſh incontinence in the one with death, and to excuſe the other with only the loſs of dower and a ſcourging; eſpecially if we conſider that the civil conſequences of the one and the other are ſo very diſproportionate.*

* Eſpecially too as the affair of ſcourging was what the wife muſt of courſe be ſuppoſed to have been uſed to; unleſs her huſband, neglecting Solomon's advice, by ſparing the rod, had ſpoiled the child; for the civil law gave the huſband a very wholeſome authority over his

But

But though Wood could not comprehend the reaſon why the huſband was puniſhed with death, when the wife eſcaped with ſcourging, it is plain from this very circumſtance, that by adultery in the huſband was not meant mere fornication, or the ſimple act of incontinency. It was the crime of lying with another man's wife; a crime much more heinous in a married man, who had a wife of his own to go to, than in a ſingle man, who had none; the crime, of the married man, being, what our lawyers call double adultery; and therefore, it is no wonder it was ſeverely and ſignally puniſhed.

At the ſame time, we may learn, from the Code, that adultery, even in a huſband, was not thus ſeverely puniſhed, unleſs it was commited knowingly and wilfully.

wife; allowing him for ſome miſdemeanours *flagellibus et fuſtibus acriter verberare uxorem*, that is, according to ſome tranſlators, "to *cane* or *lace her ſides* very handſomely:" an unpoliſhed cuſtom it is true; prevailing at preſent, I think, only in Ruſſia, under the government of an Empreſs remarkable for her matrimonial obedience.

"If

"If one lies with another's wife, not "knowing her to be married, as in the pub-"lick ſtews, this puniſhment ought not to "to be inflicted; for, though a man, who "attempts an unlawful thing, ſhall be liable "to the conſequences of it, yet thoſe *conſe-*"*quences* ought to be of the ſame nature with "the firſt deſign.* As when one intends "to kills *Titius*, and kills *Marius* by miſtake, "he ſhall die for it; becauſe he intended "murther. But he that intended to com-"mit fornication with *Titia*, and ignorant-"ly commits adultery with her, not know-"ing her to be married, ought not to be "puniſhed for adultery; for a crime of a "different nature was intended. What if "the man deſigned adultery with Titia, and "it appears that Titia is unmarried? Neither "ought he in this caſe to be puniſhed as an "adulterer, for the *intention* and the *act*

* Agreeable, as he might have obſerved, to the ancient maxim, *actus non facit reum, niſi mens ſit rea.*

"ought to purſue each other, at leaſt in the "general deſign.*

It is hence extremely clear, that the carnal commerce of a married man with a woman, whom he does not know, or has not reaſon to believe, is married; is not adultery in the man; whether the woman be married or ſingle: while, on the contrary, a married woman is guilty of adultery, by carnal commerce with any man but her huſband; becauſe ſhe cannot be inconſcious of her own marriage, and therefore muſt know that ſhe is both principal and accomplice, in the lying with another man's wife; which is *of the very eſſence*, as the ſchoolmen ſay, of adultery.

This diſtinction between adultery and ſimple fornication is perfectly conformable to the ancient canons of the chriſtian church, and the judgement of the ableſt ſcholiaſts;

* Wood Inſt. page 273, See alſo Juſtinian's Code.

before

before they were ſuperſeded by the modern innovations of popery. Thus Theodore Balſamon, in his ſcholium on the 48th Apoſtolic canon, ſays that, if a married man has to do with a ſingle woman, he does not commit adultery, but only fornication; but, if he lies with a married woman he is an adulterer. Whereas, if a married woman has the carnal knowledge of any man whatever, except her huſband, ſhe commits adultery.*

The ſame doctrine is laid down alſo in the canons of St. Baſil, and appears to be univerſally received by the primitive fathers of the ancient Greek and Latin churches.

Nor was this doctrine merely preceptive; it was confirmed by diſcipline: for the huſ-

* Scias autem, quod vir quidem, ſi adhuc conſtante matrimonio cum aliqua muliere liberâ rem habeat, fornicationem, *non adulterium*, committit: non ita autem, ſi cum ea quæ viro conjuncta eſt; tunc enim ut adulter punitur. Mulier autem, ſi cum *alio quocunque*, conſtante matrimonio coëat, ut adultera punitur.

See Beveridge's Synodicon. Tom. I. p. 32.

band was permited, nay enjoined, to put away his wife for adultery; but the woman was expreſſedly forbid to leave, or put away, her huſband for fornication, or even adultery.

In the ninth canon of St. Baſil, it is declared, on the authority alſo of Hieremias, that "if a married woman goes aſtray with "a man, ſhe ſhall not be returned to her "huſband; but remain in her pollution. "For to live with an adultereſs is ab-"ſurd and impious."* At the ſame time the ſame canon declares, and is ſtrenuouſly ſeconded by the ſcholiaſts, that a married woman cannot lawfully leave, or put away, her huſband, though he be a fornicator and even an adulterer.†

* Si fuerit mulier cum alio viro, non revertetur ad virum ſuum, ſed polluta polluetur. Qui habet adulteram *ſtultus* et IMPIUS? Baſ. Can. IX.

† Mulier ſiquidem, quæ à viro ſecedit, alterique adjungitur, adultera judicatur, nec amplius a viro ſuo recipietur. Virum autem, etiamſi fornicatus fuerit, aut

I have

I have already mentioned that Martin Bucer, in his famous treatiſe on divorce, addreſſed to Edward the ſixth, devotes a whole chapter to prove it unlawful for a chriſtian to cohabit with a known adultreſs. Not having his book, I cannot cite any of his arguments; but muſt content myſelf with the authority of Milton, for his having fully proved his point. Not that I need rely on it. The Moſaic law expreſſly commanded the huſband to put away his wife on juſt cauſe of diſlike; and certain it is that not

adulteratus, mulier relinquere haud poteſt. ZONAR *de can.* IX. *Baſilii.*——The ſame ſcholiaſt, in his note on the 48th Apoſtolic canon, expreſſes himſelf alſo as follows. "If a married man have to do with a woman not his wife, we judge him guilty of fornication; but *we have no canon* that ſubjects him to the puniſhment of *adultery*, if the woman, he lies with, be *unmarried*: the wife therefore muſt receive the huſband returning from fornication, but the huſband may turn his incontinent wife out of doors." "Si vir uxori cohabitans, cum "altera fuerit, fornicatorem talem judicamus: *Non* "tamen *habemus canonem*, quo adulterii crimini ſubjiciatur, "ſi ſit in non-nuptam peccatum. Uxor itaque a forni-"catione redeuntem maritum ſuum recipiet; maritus "vero pollutam ab ædibus ſuis excludet."

Beveridge's Synodicon ubi ſupra.

only the primitive fathers were of this opinion; but the chriſtian neceſſity, of a man's caſting off a known, and even a ſuſpected * adultreſs, was declared by ſeveral of the earlier councils; it was indeed enjoined *pro ſalute animæ*, on pain of ſpiritual cenſure and corporal penance, particularly by the councils of Eliberis, Neocæſarea and Nants. The firſt decreed the huſband excommunicate, who kept his wife knowing her to be adultreſs; and the laſt condemned him to a ſeven years penance.

Into what a dilemma therefore were chriſtian huſbands reduced by the popiſh council

* The ſpirited delicacy of Julius Cæſar on this head is well known. "It is not enough that Cæſar's wife be innocent, ſhe muſt not be ſuſpected."

The novels of Juſtinian allowed the huſband privilege to kill any perſon, whom he but ſuſpected of abuſing his bed, after he had given him three warnings, in writing, before witneſſes, not to converſe with her; for then, if the perſon admoniſhed neglected this notice and was found thrice in ſuſpected places with her, the huſband was excuſed from the penalty of murther if he killed him. *See Wood Inſt.* Book III. chap. x. alſo *Juſt. Nov.* 117. *c. ult.* See alſo on this ſubject *Wagenſeil de uxore adulterii ſuſpecta.*

of

of Trent; which decreed the marriage bond indiſſoluble on any account whatever? They could neither lawfully get rid of the adultreſs, nor live lawfully with her.

This doctrine, of the indiſſolubility of marriage, was a moſt excellent expedient for the church of Rome. By opening a channel for the trade of diſpenſations, it added not a little both to her wealth and power. But, as we have no ſuch diſpenſations, in the church of England, the proteſtant huſbands in this kingdom are in a worſe ſituation than the huſbands of other chriſtian countries; while our ſpiritual courts remain ſo inexorably attached in this particular to the popiſh canons.

The whole body of the legiſlature alone can relieve Engliſh huſbands; but the mode of relief, by act of parliament, is much more difficult and expenſive than that of the papal diſpenſations. Add to this that the legiſlature ſeldom interfere in theſe caſes, till after the

parties have obtained a divorce, or paſſed at leaſt under the coſtly ceremonies of attempting it, in the eccleſiaſtical courts.

There are indeed ſome inſtances on record in which the parliament have taken up ſuch caſes originally; as in that of the duke of Norfolk before mentioned. In this caſe a divorce *a vinculo* was granted by parliament, without any previous proceedings in the ſpiritual courts. It is true the counſel, in behalf of the dutcheſs, * laboured extremely hard, to convince the lower houſe of the propriety of referring the cauſe to the eccleſiaſtical courts. But their pleas were only thoſe of precedent; tending only to prove that thoſe courts had on all occaſions delayed, protracted, and as much as in them lay, prevented, the obtaining of divorces both in and out of parliament.

* Conſiſting of two able barriſters, Sir Thomas Powys and Mr. Dodd, aſſiſted by that celebrated civilian Dr. Pinfold.

The

The Arguments of Sir Thomas Powys and Dr. Pinfold in particular, evidently betrayed that the craft was thought to be in danger. They had nothing material to urge againſt the divorce, but much againſt its paſſing in parliament without the previous ſanction of the ſpiritual court. "What is it" ſaid Sir Thomas, "that guards you from an infinite "application of this nature but requiring per-"ſons to take the ordinary courſe firſt, and "to come round about to the parliament, as "the laſt remedy, to carry the ſentence per-"haps farther than the eccleſiaſtical court can "do; but if perſons can come up directly "hither, I am apt to think your lobby will "be crowded with petitioners of this nature "the next ſeſſions: though the ſeſſions now "are long and frequent, this ſingle buſineſs "may be ſo great as to obſtruct all other bu-"ſineſs; I am ſure a committee for adultery "would have full employment.—I know "nothing can be ſaid on the other ſide with "good reaſon (unleſs that which I heard in "another place) why they ſhould not go to

"the

"the eccleſiaſtical court, which is that thoſe "courts cannot divorce *a vinculo matrimonii* "therefore it would have been a vain thing; "this may be a good reaſon for them to come "to you afterwards, but 'tis no reaſon for "them to come here at firſt."

In confirmation of this argument, Dr. Pinfold confirmed the aſſertion as to the practice, and endeavoured to juſtify it, as being agreeable to our eccleſiaſtical conſtitution, grounded on the ſenſe of the ancient canons. *

To this plea Serjeant Wright very pertinently replied. "Mr. Speaker I am of coun-"ſel for the duke of Norfolk, who is your "ſuppliant for this bill, for redreſs againſt the "higheſt injury that can be offered: the "rights of his marriage-bed have been in-"vaded, and he comes for that relief here,

* With all his abilities, however, he did it very lamely. Indeed there was no ground for his doing it better, as will be ſeen by comparing the ſeveral authorities quoted in this tract: in which I have been the more particular, becauſe I would not have the reader miſled by great names.

which

"which no other court can afford him; for "the learned doctor on the other ſide, tells "you plainly from the canon law, that there "can be no divorce *a vinculo matrimonii* in "their courts; now to ſend us to a court for "relief, that they tell us before hand can give "us none, is in effect to tell us we ſhall have "none at all."

The parliament ſeemed ſenſible of the propriety of this reflection, and gave the duke relief without ſending him to the ſpiritual court. They acted in the ſame manner in the caſe of the earl of Macclesfield, in whoſe favour an act was paſſed before ſentence of divorce, obtained in the eccleſiaſtical court.

Theſe, with ſeveral other caſes of a ſimilar nature, ſufficiently ſhew that the practice of the courts-chriſtian, in reſpect to divorce, has long been repugnant to the wiſdom and juſtice of the legiſlature.

This will appear ſtill farther on a retroſpect to the caſe of the Marquis of Northampton, in the

the reign of Edward the the ſixth. "The "marquis was married to a daughter of the "earl of Eſſex, and ſhe eloped from him, and "was proſecuted in the eccleſiaſtical courts, "and there was ſentence againſt her of di-"vorce; the marquis from thence took upon "him to marry a daughter of the lord Cob-"ham, and after four years marriage of her "he obtained an act of parliament to ratify "the ſecond marriage, which act recites a "ſettlement of divorce in the eccleſiaſtical "court." But, though the act does recite the proceedings in the ſpiritual court, it is plain the marquis married again in open defiance of their canons. It is plain alſo that the legiſlature approved of ſuch marriage as being conformable to the laws of God, however incompatible with thoſe of the church.* The divorce alſo was not made any plea for paſſing the bill; ſo that the act was expreſſly granted,

* It is farther remarkable that on this occaſion the houſe of peers was ſo unanimous, that there were but two temporal and two ſpiritual lords diſſentient, on paſſing the bill.

to

to deliver the marquis from the inquiſitorial tyranny of the ſpiritual court.

In the before mentioned caſe, alſo, of Lord Roſs, afterwards Earl of Rutland, we are told that, notwithſtanding he had obtained a divorce in the ſpiritual court, no mention is made of it in the act.

It is hence evident the legiſlature very juſtly conceives that adultery does really diſſolve the marriage, and therefore it permits the parties divorced to marry again; though it leaves them abſurdly open to the miſconſtructions of the canons and the mercileſs fangs of an eccleſiaſtical cenſor.

Is it not ſtrange, therefore, that it ſhould ſtill continue to countenance ſuch practice, eſpecially as it is evidently inconſiſtent with the ſenſe and ſpirit of the common and ſtatute law of the realm?

I have already hinted that the ſtatute againſt polygamy excepts the party who is divorced,

though

though but from bed and board, by the ſpiritual court: by which it is evident the legiſlature conſidered the ſecond marriage of ſuch party not only conformable to the law of God, but alſo conformable to the common law of England. Quod lex non prohibetur, permittitur.

The ſuggeſtion therefore is not true, which is laid down by modern practitioners, viz. that "by the canon law, *which is approved* "*and confirmed by the laws of this realm in* "*this behalf*, it is not lawful for perſons who "are divorced in theſe caſes to betake themſelves to a ſecond marriage, whilſt their "former huſband or wife are alive; becauſe "the matrimonial bond once perfected, cannot be diſſolved by man, but only by "death."*

Now I again affirm, and that on the beſt authorities,† that the exceptive clauſe above-

* See Conſett's tranſlation of Clarke. Part VI. ſect. 2.

† See Burn's eccleſiaſtical law. Art. Polygamy. Alſo the authorities there quoted.

men-

mentioned in the ſtatute of 1 J. c. 11. does in fact permit perſons, under the predicament here ſtated, to marry again; ſo that this practice of the canon law *is not*, as it ought to be and is pretended, *approved and confirmed by the laws of this realm.*

It is true that the ſpiritual court may take notice of ſuch marriages and annul them; but nothing is more clear than that the exceptive clauſe in the ſtatute proves ſuch practice, to be inconſiſtent with the common and ſtatute law of the realm; by which the deciſions of the canon law ought confeſſedly in England to be controuled: nay, I will be bold to ſay, are controuled; for by two acts of parliament made in the 25th of Henry the VIII. and the 3d and 4th of Edward the VI. it is declared that no canons ſhall be allowed that be any way repugnant to the laws of God, or the ſcripture, the king's prerogative royal, and the ſtatutes of the land.

As a farther confirmation of the ſenſe of the laws in this particular, the ſtatute law impoſes a moſt heavy fine on huſbands, who ſhall be reconciled to their wives, and conſent to receive them again after elopement or cohabitation with an adulterer; by reſtoring ſuch wives to their right of dower, which they had forfeited by their adultery. And yet, notwithſtanding this, an injured Engliſh huſband is under the neceſſity, from the modern practice of the ſpiritual courts, either to live a life of celibacy, deprived of the ſweets of matrimonial ſociety, and a help meet for him, according to God's holy ordinance; or he muſt take back and continue to cheriſh an adultereſs in his boſom, at the peril of reſtoring her forfeited rights of alimony and dower, and of bearing himſelf the ſevere reproaches of an enlightened conſcience, and the juſt contempt of the world! Do the popiſh inquiſitions of Spain, Italy or Portugal, impoſe a heavier yoke on the minds and bodies of men than this; which is laid on them by the proteſtant ſpiritual courts in England? Aſſuredly not!

But

But, granting it expedient that the divorce *a vinculo*, unleſs for cauſes exiſting before marriage, ſhould be ſubjected to the wiſdom of parliament; the practice of refuſing the divorce *a menſa et thoro* to a huſband, in caſe of his wife's adultery, on her plea of recrimination, is in the higheſt degree injurious, illegal and inquiſitorial: it is contrary not only to the apoſtolic and other canons of the chriſtian church, but alſo to the common and ſtatute laws of this kingdom.

It is laid down, in the practice of the eccleſiaſtical courts, that "a compenſation of "the crime, doth hinder a divorce, that is, "if the defendant doth prove, that the plain-"tiff hath alſo commited adultery, the de-"fendant is to be abſolved, as to the matters "requeſted in the libel of the plaintiff. *

Agreeable to this maxim Dr. Pinfold, in behalf of the dutcheſ of Norfolk, pleaded

* Conſett. Pract. of ecc. courts. part. vi. ſ. 2. p. v.

that, according to the text law *de divortiis*, if the adultreſs "can prove the ſame thing "againſt her huſband, the fault of the one "muſt be ſet againſt the fault of the other, "and he can't have the advantage of his "prayer." But what is the preciſe meaning of all this? Prove the ſame thing! what thing? Adultery! or merely carnal copulation? Here is a ſtrange want of diſcrimination. If one fault be to be ſet againſt, or make compenſation for, another; they ſhould both be proved exactly ſimilar, or acts of equal criminality. The mere act of copulation, ſuppoſing it criminal, is no more *adultery*, than the accidentally-killing a man would be *murder*. It is the circumſtances of the parties, and intention of the perſon committing the act, that inſtitute and diſtinguiſh the crime. Hence, Serjeant Wright very properly replied "the "Doctor hath inſiſted on one thing, which "I think is very extraordinary. He tells you, "by the rules of their law, if the woman can "recriminate, and prove her huſband guilty,

in

" in ſuch a caſe, they muſt ſet the fault of one
" againſt the fault of the other.—I wiſh the
" doctor could have told you the offence had
" been equal, that the injury to families had
" been equal: A man by his folly of this
" kind brings no ſpurious iſſue to inherit
" the lands of his wife; but a woman de-
" prives her huſband of any legitimate iſſue;
" for when ſhe converſes in this manner with
" another man, the iſſue may be equally
" look'd upon to be that man's, if not more."

To this pertinent plea no ſufficient anſwer could be given. Sir Thomas Powys indeed endeavoured to divert the force of it, by aggravating the ſtate of the caſe, and making the idle ſuppoſition that the debauching a man's wife, with the getting a baſtard to inherit his eſtate, is a leſs evil than the accidental contagion of the venereal diſeaſe. " They
" ridicule" ſays he " the doctor's notion of
" recrimination: But I apprehend the doctor
" is right in it; for it would be hard if a man
" ſhould marry a young woman and give her

"an ill example in his own family, (I do not "say 'tis this case*) and bring her acquainted "with loose and ill company, and by his ex-"ample or provocation lead her into the same "offence, would that man deserve to be re-"warded with a new wife, and another por-"tion, because his first wife had only follow-"ed his example? They say, the offence is "not equal, because the man brings no chil-"dren into the family. I doubt it happens "oftentimes to them that go abroad, that "they bring home that to their wives, "which sticks longer by them than their chil-"dren."

Who does not see through the fallacy, or rather inanity, of this reply? Should a foolish husband, indeed, set his wife an ill example in his own family, and bring her acquainted with his mistresses, as here supposed, he certainly would deserve his fate; and the huf-

* No, nor will the circumstance hardly ever be found in any other.

band's

band's crime might well be adjudged a compenſation for that of the wife. But when is this caſe? Hardly ever.* Admitting, nevertheleſs, that, in all ſuch caſes, the plea of female recrimination were juſtifiable, I have already made it ſufficiently clear that the mere carnal knowledge of a woman by a married man (if ſuch woman be not, or be not by him known or believed to be, married) is not according to the canons of the chriſtian church,† to be denominated or adjudged adultery. So

* Not but that in ſuch a caſe, I could wiſh that by the laws of England juſtice might be done on all parties; which perhaps can never be better done, than by adopting ſome or other of the juris-prudential maxims or cuſtoms of the ancients. By a law of Ethelbert, the ſeducer of a married woman was condemned to purchaſe, the injured huſband, another wife; in the ſtead of her he had ſeduced. Perhaps in this caſe ſuch a compenſation might be juſt; if the ſeducer did not buy a better, or worſe wife than he ſeduced. Otherwiſe indeed, the maxims of the eccleſiaſtical courts may be right, and it would be more juſt, that, in the common phraſe, the man ſhould have his mare again!

† I ſay the chriſtian church, in contradiſtinction to the Romiſh church, that mother of abominations, and ſpouſe of antichriſt!

that a married woman, accuſed of adultery by her huſband, muſt alledge farther than, that ſuch huſband has had carnal knowledge of looſe women; otherwiſe ſhe offers not the adequate compenſation required even by the profeſſed rules of the court.

I have indeed gone farther and ſhewn that, if ſhe could even prove adultery in him (that is, his wilfully and knowingly lying with another man's wife) that alone would not, according to the apoſtolic and primitive canons, be a ſufficient ground for her leaving him. Not but that the primitive church did in ſome caſes, admit of a woman's leaving or putting away her huſband, on good grounds of divorce.

Of theſe the moſt applicable to modern manners and pertinent to the preſent purpoſe, are the three following. 1ſt. When the huſband, by *laying a trap* for her, aſſiſts or connives at her ſeduction, and countenances her proſtitution to another man. 2d. When

When, having accuſed her of adultery he cannot make good his accuſation by ſufficient proof.* 3d. When he holds carnal commerce with another woman in his *own houſe* or *neighbourhood*; and, being admoniſhed by the wife or her relations, ſtill perſiſts in ſuch practice.†

* It is to be here obſerved that, in favour of the ladies of antiquity, though not much to the credit of their modeſty, this ſufficiency of proof was no very eaſy matter. Balſamon, in his ſcholium on the eighth canon of the council of Neocæſarea, tells us that, by ſeveral laws, a woman could not be convicted of adultery, unleſs *five witneſſes* would depoſe on oath they ſaw her in the *preciſe act*. "Diverſæ leges jubent mulierem non aliter condemnari ut adulteram, quam per apertas probationes; *id eſt*, per quinque teſtes jurantes ſe vidiſſe in IPSO ACTU fieri *adulterium*. *Vid.* Beveregii pandecta canonum, &c. Tom. I. page 408.

† 1. Si pudicitiæ conjugis inſidias, ſtruens aliis eam ſtuprandum tradere conatus fuerit.

2. Si maritus, uxore adulterii accuſata, rem non probaverit.

3. Si alia cum muliere coeat in eadem domo, vel eadem civitate, ac monitus ab uxore, vel parentibus ejus, non velit abſtinere. *Matt. Mon. Syn. Alp. Lit. G. Chap.* 13.

This latter caſe comes to the argument of Sir Thomas Powys, before quoted, viz. the ſetting a bad example to the wife; the only circumſtance in which the incontinence of the huſband can make any compenſation for that of the wife.

We ſee here that the ancient canons very juſtly diſtinguiſhed between the ſimple act of ſecret fornication; which was regarded in a venial light, and the open commiſſion of ſuch act in the preſence, or with the knowledge, of the wife: and, for a very good reaſon; becauſe, though ſuch act in the huſband, abſtractedly conſidered and unknown to the wife, was judged a matter of indifference, the keeping a ſtrumpet in *his own houſe*, or *under her noſe*, as the vulgar emphatically expreſs it, was juſtly held to be an inſufferable inſult; which might poſſibly provoke her to revenge it, by being on her part guilty of adultery; which is a moſt heinous and abominable crime. Hence mere fornication in the huſband, ſo circumſtanced, became a reaſonable cauſe of divorce, to be pleaded by the wife.

But to return to later principles and practice.

It is certain that the modern and deſultory uſe of the word adultery, gives a kind of ſanction

ſanction to the practice of the ſpiritual court, in miſtaking for it mere fornication: but courts of juſtice ſhould abide by the preciſe and technical, not the looſe and popular, meaning of words. If their ſentence be directed by the canons, their proceedings in hearing the cauſe ſhould be directed by the canons too. I ſay, therefore, that, if a wife, againſt whom a ſuit is inſtituted for divorce, ſhould recriminate; the fulleſt proof, ſhe can bring againſt her huſband of *ſtuprum* or fornication, will not be ſuch a compenſation of her crime, as ſhould prevent his obtaining his ſuit.

With regard to recrimination in general, it may not alſo be improper to obſerve; that, being uſually the effect of revenge, it has for that reaſon been regularly prohibited in ancient practice.

"Antecatagoria ſays Wood (a croſs ac-
"cuſation) is either by way of *exception*,
"when one that is accuſed retorts the ſame
"crime

"crime upon the accuſer, or a different crime, "rather for his own defence than for a pub-"lick puniſhment. For the principal de-"ſign is that the accuſer ſhould be ſilenced "as an infamous perſon. Now if the ac-"cuſed perſon charges a leſſer crime upon "the accuſer, he muſt be ſtopp'd, till he "was cleared himſelf; but if it is a crime "of a higher nature, *that* ſhall be heard "firſt."*

Now, taking ſimple fornication for adultery, or even admiting real adultery proved againſt the huſband, it will hardly be pretended that adultery is a greater crime in the huſband than the wife. Nay it will hardly be pretended that it is not a leſs. With what kind of propriety then can a ſpiritual court admit the female plea of recrimination, according to the modern practice?

* See Wood, Inſt. Book IV. chap. iv. Alſo the Code, in locis, to which he has referred.

But,

But farther, to deprive the advocates for this practice, even of a ſhadow of argument in its favour, I ſhall proceed to conſider the matrimonial vow or contract, entered into by perſons married according to the rites and ceremonies of the church of England; not merely as a civil, but alſo as a moral covenant. And, even in the latter light, it will appear that the huſband, in being guilty of concubinage or mere fornication, is not guilty of any breach of ſuch matrimonial covenant; for which he is juſtly liable to cenſure either in *foro conſcientiæ* or *court-chriſtian*; although the wife, in being guilty of adultery, is liable to the cenſure of both.

To determine whether a covenant or contract is broken, it is firſt neceſſary to enquire fully into the ſenſe and meaning of the terms of it. For, as Cicero obſerves, "Quæ à ratione ſuſcipitur de aliqua, re inſti-"tutio, debet à definitione proficiſci, ut in-"telligatur quid ſit id de quo diſputetur."*

* De Officiis.

The

The troth plighted in marriage is expreſſed, on the part of the man, in the following words. "I N. take thee N. to my wedded wife, to "have and to hold from this day forward "for better for worſe, for richer for poorer, "in ſickneſs and in health, to love and to "cheriſh, till death us do part, according "to God's holy ordinance; and thereto I "plight thee my troth."

On the part of the woman, the engagement is *mutatis mutandis*, expreſſed in the ſame words, except that the words *and to obey*, are added after the word *cheriſh*. In theſe few words, of the moſt important concern however, lies the difference between the matrimonial contract on the one part and the other, on the ſide of the man and that of the woman.

For, by *obedience* is univerſally known and underſtood, the acting in conformity to the known will of the perſon, to whom ſuch obedience is due. So that if a huſband

does

does not, by ſome open conceſſion or palpable connivance, permit the adultery of his wife, ſhe muſt neceſſarily be ſuppoſed to act in diſobedience to her huſband; when ſhe is guilty of violating the marriage-bed. For otherwiſe ſhe can never conceive it to be conſiſtent with her huſband's will, that ſhe ſhould proſtitute herſelf to other men, to get children for him to maintain, or to inherit his ſubſtance.

Here then is a very eſſential difference between the terms of the vow, or matrimonial contract, on the ſide of the man and that of the woman. The man promiſes the woman no ſuch obedience. He is not guilty, therefore, of conjugal infidelity, by diſobeying her, or acting againſt her known will, either by converſing with other women, or any other act. He may be cruel, wicked and unjuſt; but, while he continues publickly to hold for better for worſe, for richer for poorer, in ſickneſs and in health, to love and to cheriſh his wife; he may privately

love

love and cheriſh as many other women as he pleaſes, without being guilty of conjugal infidelity, or breach of his matrimonial vow.

It is ſuppoſed by ſome that the terms of the queſtion put by the miniſter previous to plighting the troth, and to which the huſband aſſents, are underſtood in the troth itſelf: I mean, *and forſaking all other, keep thee only unto her.* From which it is miſtakenly conceived that the parties promiſe to have no carnal commerce with any other perſon.

But that this promiſe, of *keeping only to* each other, can have no relation whatever to ſuch commerce, is evident; becauſe it is expreſſly founded on their *forſaking all other* for that purpoſe. So that, if we are to take the latter part of the ſentence in the ſenſe ſuppoſed, we muſt take the former part ſo too; and the conſequence is a direct inſinuation that both parties lived before in a ſtate of concubinage or fornication: which would be abſurd.

It

It is evident that this paſſage means no more than, what is expreſſed by the divine command, at the firſt inſtitution of marriage, when it was ſaid, "Therefore ſhall a man leave his "father and mother and cleave unto his wife."* From which all idea of carnal copulation is neceſſarily foreign. The huſband, therefore, doth not bind himſelf either directly or indirectly by his marriage vow, never to be guilty of an act of incontinence; as the wife does, by evident implication in ſwearing fealty and obedience.

And here it is to be obſerved that in the queſtion put by the miniſter to the woman, the words, *ſerve him*, are added to thoſe *to obey him*, though omitted in the form of the troth. Thus the duty of a married woman is, *ſworn ſervice to* a lord and maſter; who binds himſelf only to provide for, love and cheriſh his vaſſal or ſervant. Now it is in the very nature of all contracts between lord and vaſſal, maſter and ſervant, that the due

* Gen. chap. ii. v. 24. Alſo Matt. chap. xix. v. 5.

diſcharge

diſcharge of the ſervice of the vaſſal or ſervant is the condition of the obligation on the part of the lord and maſter.

That this conſideration ſhould be more particularly attended to, in the matrimonial ſuit and ſervice, than in any other feudal tenure, will appear from hence; that the lord has it not in his power to enſure the fidelity of his vaſſal, as in other fiefs. For, though the divine lawgiver in his inſtitution of marriage expreſſly ſays to the woman, "Thou ſhalt be under the power of thy huſband," we all know, that the huſband, is, with regard to the fealty of his wife and the honour of the marriage-bed, in the power of his wife. The huſband would be in a critical predicament, indeed, therefore, if, poſſeſſed of the right without the power, he is to contend, for the right of puniſhing wrong in her, who without the right, has the power to do as ſhe pleaſes.

We have indeed had lawyers abſurd enough to pretend in juſtification of the practice of

refuſing

refuſing divorces, that the comparative words "for better for worſe" are ſynonimous to the poſitive words *good* or *bad*, *virtuous* or *vicious*, and that the incontinence of the wife is therefore an adventitious circumſtance, like ſickneſs or health, to which the huſband binds himſelf to ſubmit, by the terms of the contract. But the fallacy of this is evident; both man and woman bind themſelves to live together according to God's holy ordinance; which prohibits female incontinence,

Were it otherwiſe, a woman might proſtitute herſelf with the conſent of her huſband, without breach of her matrimonial vow; pleading the moral neceſſity of conforming to the will of her huſband, according to her ſworn promiſe of obedience.

I am well aware that the miniſterial divine, who repeats the form of ſolemnization of matrimony, does, in the preceding part of the ſervice, give a formal expoſition of the cauſes for which matrimony was ordained;

which cauſes, as there laid down, may be ſuppoſed to conſtitute God's holy ordinance; according to which married perſons bind themſelves, by the oath, and mutual troth plighted to each other, to live.

Theſe cauſes are as follows.

"Firſt, It was ordained for the procreation of children, to be brought up in the fear and nurture of the Lord, and to the praiſe of his holy name.

"Secondly, It was ordained for a remedy againſt ſin, and to avoid fornication, that ſuch perſons as have not the gift of continency, might marry, and keep themſelves undefiled members of Chriſt's body.

"Thirdly, It was ordained for the mutual ſociety, help, and comfort, that the one ought to have of the other, both in proſperity and adverſity." *

* See the matrimonial ſervice.

It

It is very juſtly obſerved, by Milton, that the order of theſe cauſes is reverſed. By the divine inſtitution, the laſt was firſt and the firſt laſt. "And the Lord God ſaid, it is "not good that man ſhould be alone, I will "make him a help meet for him." It was after this, that God bleſſed them, and ſaid unto them "Be fruitful and multiply."

As to the ſecond of the above aſſigned cauſes, I do not ſee that it entered, at that time, into God's holy ordinance, at all; and yet the miniſter expreſſly ſays, in the ſervice, that the holy ſtate of matrimony, as he is going to celebrate it, is an honourable eſtate inſtituted of God in the time of man's innocency, though not a ſyllable is ſaid in the ſcripture about the ſecond cauſe.

There can be no doubt that chaſtity is a moſt amiable virtue as well in man as woman, and that the cauſe in queſtion is a laudable incitement to marriage; it is a prudential and virtuous ordinance of man; but ſtill it does not appear

to be the ordinance of God, at the inſtitution of marriage; if that inſtitution took place, as the ritual ſays, in the time of man's innocency.

On the contrary, if we judge by the conſequences, it was quite otherwiſe. So far was the practice of the patriarchs, and their ſucceſſors, living under the moſaical diſpenſation, from giving countenance to any ſuch cauſe of ordination, that they indulged themſelves freely in concubinage and fornication. Abraham, Iſaac and Jacob had their wives and concubines. David, the man after God's own heart rioted in concubinage; nay his adulteries were not even checked, till he aggravated their guilt by accompanying them with murder. It was not till Uriah, the huſband of the fair adultreſs Bathſheba, was ſlain; till, by the moſt infamous contrivance of the *royal adulterer*, that brave and loyal officer, had fallen in the "forefront of the hotteſt battle;" that Nathan was ſent by the Lord to reprehend him with "Thou art the man."

The

The number of wives and concubines of King Solomon, the wiſeſt of men, is proverbial; and yet, if marriage were originally inſtituted in the days of man's innocency, as a remedy againſt ſin and to avoid fornication, the wiſeſt man in the world muſt have been the wickedeſt man in it.

But, to give the faireſt play to my antagoniſts in the argument; I will juſt, for the ſake of it, admit that God's holy ordinance, confeſſedly inſtituted in the days of man's innocency, might receive ſome additional confirmation under the chriſtian diſpenſation. I ſay *might*, not that it *did*. Our Saviour himſelf came to fulfil the law: but, we do not find, that he varied or changed it, in a ſingle inſtance. He did not even condemn the woman taken in adultery. "Hath no "man condemned thee? Neither do I con- "demn thee. Go, and ſin no more."

Occaſion indeed ſeems to have been taken, from a very equivocal paſſage in St. Paul's

epiſtle to the Corinthians, to add this merely-moral motive to the religious cauſes of God's holy ordinance.

The paſſage is this.

"Nevertheleſs, to avoid fornication, let "every man have his own wife, and let "every woman have her own huſband.— "Let the huſband render unto the wife due "benevolence: and likewiſe alſo the wife "unto the huſband."— I. Cor. chap. vii. ver. 2. 3.

The apoſtle, however, expreſſly ſays, "I "ſpeak this of permiſſion, not of command-"ment." By which he plainly intimates that he ſpeaks from doubtful, and not divine, authority; as he does in like manner, in more places than one in the ſame chapter.*

* Thus in verſe xi. But to the reſt ſpeak I, not the Lord. And again, verſe xxv. Now concerning virgins I have no commandment of the Lord, yet I give my judgement, &c.

And

And indeed, who, that has any reſpect for the fair ſex, or the original inſtitutions of God and nature, can conceive the apoſtle to have been here divinely inſpired; when in the very introduction to theſe, his remarks on the diſcipline of the marriage ſtate, he declares totally againſt it, by ſaying "It is good for a man not to *touch* a WOMAN." I might ſafely appeal againſt him to the graveſt and chaſteſt of our divines; to the whole male and female world! but I will examine firſt into the pretended authority.

In the beginning of the creation, ſays the evangeliſt Mark "God made male and fe-"male.—For this cauſe ſhall a man leave "his father and mother and *cleave* to his "wife." "*Agglutinabitur* uxori ſuæ," ſays Theodore Beza.

On the contrary, St. Paul, in a confeſſed reverie, ſays "It is good for a man not to touch a woman," Is not this diametrically oppoſite to the firſt inſtitution of the ordi-

nance of matrimony? Is it not directly contrary to the expreſs command of God, given to the ſexes at their creation? Is it not abſolutely defeating the very end, for which they were created male and female?

Shall we then ſet aſide ſuch poſitive and expreſs commands of God, for the mere ſuggeſtion of an apoſtle, profeſſedly uninſpired at the time of his ſuggeſting it?

But even granting that St. Paul was inſpired, at the time of promulgating theſe injunctions; it will not appear, on a fair examination of the text, that they militate againſt polygamy and concubinage, much leſs enjoin monogamy.

It is true that in our Engliſh tranſlation the words γυνὴ and γυναικὸς are rendered by the word *wife*, but the original Greek hath, by no means, that preciſe and confined ſignification. It means a female or woman in general, thoſe words being indiſcrimi-

criminately made uſe of to ſignify *fœmina*, *mulier*, *uxor* and even *virgo*, viz. a female, a woman, a wife or concubine,* and even a virgin. Indeed the very etymology of the word, which is formed from γέγονα, *natus ſum*, becauſe we are born of a woman, ſhews it had originally no reference to the conjugal, but rather to the maternal relation: it is thus uſed for *mater* in the Greek tranſlation of the old teſtament†. Again it is uſed by the evangeliſt Mark, chap. vii. ver. 26. for a woman in general, without any relation to huſband or wife. Ἦν δὲ ἡ γυνὴ Ἑλληνὶς, *erat autem mulier Græca*, the woman was a Greek. It is uſed indeed as *uxor*, *quaſi unica ſoror*,‡ by St. Paul in his epiſtle to Titus,

* For ſo Horace uſes *uxor*.

Uxor invicti Jovis eſſe neſcis?

Ode l. iii. 27. 73.

nay, *uxor* was ſometimes uſed as the female of brute animals.

Olentis uxores mariti. Ode l. i. 17. 7.

† As μὴ ἐπιλήσεται γυνὴ. Iſaiah xlix. 15.

‡ A ſiſter or companion, not *ſponſa*, a ſpouſe or wife, as Cicero has it, to Atticus, *ſua cuique ſponſa, mihi mea.*

chap.

chap. i. 6. μιᾶς γυναικὸς ἀνὴρ.* But in his epiſtle to the Galatians, chap. iv. 4. it is made uſe of to ſignify the mother of our Saviour, confeſſedly a virgin: nay, in the 28th verſe of the very chapter before us, he uſes γυνη for every ſingle or unmarried woman.†

* This paſſage may be ſuppoſed to make againſt my argument, becauſe St. Paul recommends the huſband of one wife, or more properly one woman: but for what does he recommend him? Why, to be a biſhop! it is very natural for a ſaint, who thought it good not to TOUCH a WOMAN, to prefer a monogamiſt to a polygamiſt in the affair of epiſcopacy: but at the ſame time this recommendation tacitly permits that practice in the laity. He may indeed be ſuppoſed to cenſure the practice by ſaying a biſhop ſhould be blameleſs? But ſhould not every man be blameleſs? If polygamy or concubinage, therefore, were in itſelf ſinful, it ought to have been as well prohibited in the laity as the clergy.

† This cannot be imputed to the ſterility of the Greek tongue, than which none perhaps is more copious, as it affords not only νυμφη *ſponſa*, a bride or ſpouſe, but alſo μνηστη *ſponſa*, a ſpouſe or kinſwoman. The ancient Greeks however are not the only people, who had no word in common uſe for the one wife of one huſband. It is remarkable that the modern French, as if they held each others wives in common, uſe the word *femme*, indiſcriminately for wife or woman. But how would it ſound in Engliſh, to ſay inſtead of *my* WIFE, my *woman!* our tranſlators therefore have made uſe of the word *wife*, agreeably to our manners, inſtead of the word *woman*, conformably to the original Greek.

It

It is alſo uſed in the ſame ſenſe, by Homer, who, in the firſt book of his Iliad, calls Briſeis γυνὴ, who was then a virgin, and is called by him in another place κουρη, adoleſcentula.‡

Again our Engliſh verſion does not obſerve the diſtinction, between the pronoun poſſeſſive, joined to the woman; and the epithet, or adjective, annexed to the man; which is made both in the original Greek and in Beza's tranſlations. It is in Engliſh, in both caſes, the ſame, *his own* wife and *her own* huſband; but, in the original, the terms are different. Beza alſo has it SUAM *uxorem* but PROPRIUM *virum:* by *ſuam* denoting the mere poſſeſſion of a thing, to which the poſſeſſor is not ſingly and wholly attached; but may have others of the ſame kind: whereas by *proprium* is meant ſomething ſingular and peculiar, to which the poſſeſſor is particu-

‡ Ἦδ' ἀέκυσ' ἅμα τοῖσι γυνὴ κίεν. Hom. Il. i. 348.
Ὃς ζωῷ προῖει Βρισηϊδ@. εἰνεκα κούρης
Ἀλλ' ἄγε, διογενὲς Πατροκλεις, ἔξαγε κούρην.
Ibid. ver. 336.

larly

larly and wholly devoted. Thus in the Greek it is τὴν ἑαυτοῦ γυναῖκα but it is τὸν ἴδιον ἄνδρα. On the difference of which terms the learned Paſor has the following remark. Ἴδιος, poni ſolet pro ἑαυτῦ, εος, vel σφετερος *ſuus*, inter quæ hæc eſt differentia, quod σφετερος dicatur de multis. Nón enim quæcunque *noſtra* ſunt, *propria* dici queunt.*

On the whole, it appears that St. Paul is here adviſing the Corinthians, in a matter of moral diſcipline, and not laying down religious precepts. In the preceding chapter he gives his reaſons for having nothing to do with common harlots; on which ſubject he enters by previouſly ſaying, it was rather

* When the duty, of huſbands and wives, is again taken up by this apoſtle, in the 5th chap. of his epiſtle to the Epheſians; the ſame diſtinction is preſerved. It is repeatedly ἴδιοις ἀνδράσιν but it is γυναικας ἑαυτῶν and ἑαυτῦ γυναικα. Verſe 22. 24. 25. 28. Beza indeed, in one tranſlation, takes the liberty, mentioned by Paſor, of ſubſtituting *ſuis* for *propriis* in the 24th verſe; as he does alſo in the firſt epiſtle of Peter, chap. ii. v. 1, where this ſubject is again treated of; but the diſtinction is conſtantly preſerved in the original Greek: it is both with Peter and Paul, always ἴδιον ἄνδρα.

incon-

inconvenient than unlawful. *Omnia mihi licent at non omnia conducunt.* Indeed there were phyſical reaſons, as well as religious ones, then as well as now, againſt promiſcuous copulation. On this account, ſays St. Paul in the paſſage before us, "let every "man have a woman of his own and let "every woman have her own proper or "particular man."

But, though to enjoin a man not to go to common harlots, but to have a woman of his own, be enjoining him not to be without a wife or concubine; it is not ſaying he ſhall have no more than one; he might have two, three or more; every one of them would be ſtill a woman of his own, or which is the ſame thing, one of his own women. He would obey the apoſtle's injunction in having τὴν ἑαυτῦ γυναῖκα, *uxorem ſuam.*—On the other hand the woman cannot have more than one τὸν ἴδιον ἄνδρα, *maritum* or *virum proprium*, who might nevertheleſs be the maritus or vir proprius, viz. the particular man or huſband to ſome other woman.

Thus

Thus Jacob was the only huſband of Rachel as well as of Leah, both of whom being Jacob's wives, each of them might certainly be called Jacob's wife, as either might with equal propriety call Jacob her huſband. Indeed the altercation which paſſed between them, on account of Reuben's mandrakes, will ſhew that they both thought themſelves equally entitled to his "benevolence," as the apoſtle terms it, "And "Reuben went in the days of wheat-harveſt, "and found mandrakes in the field, and "brought them unto his mother Leah. Then "Rachel ſaid to Leah, give me, I pray thee, "of thy ſon's mandrakes. And ſhe ſaid unto her, is it a ſmall matter that thou haſt "taken my huſband? and wouldſt thou take "away my ſon's mandrakes alſo? And Rachel ſaid, Therefore he ſhall lie with thee "to night for thy ſon's mandrakes. And "Jacob came out of the field in the evening, "and Leah went out to meet him, and ſaid, "thou muſt come in unto me, for ſurely "I have hired thee with my ſon's mandrakes.

"And

"And he lay with her that night." Gen. chap. xxx. ver. 14. 15. 16.

Milton, like a ſhrewd caſuiſt, takes a very unfair advantage of St. Paul's particular notions of chaſtity; but, with all his caſuiſtry, he labours in vain to reconcile them either to divine inſpiration, or the general feelings of human nature.*

How different the polemick and the poet!

Whatever hypocrites auſterely talk
Of purity, and place, and innocence;
Defaming as impure what God declares
Pure; —— —— ——
Our maker bids increaſe; who bids abſtain
But our deſtroyer, foe to God and man?

Paradiſe loſt. Book iv.

It is indeed pretended that the ſtrictneſs of conjugal diſcipline, ſuppoſed to be recom-

* See Milton's tracts on the doctrine and diſcipline of divorce.

mended

mended by the apoſtle, is confirmed by our Saviour himſelf; who is conceived alſo to have prohibited a man's having more than one wife, as well as a wife's having more than one huſband.

But this ſuppoſition is groundleſs: for, as I before obſerved from our Saviour's own words, he came not to deſtroy the law or the prophets, but to fulfil them. Now under the law polygamy was allowed; as plainly appears not only from practice but precept.*

* It were taking up the reader's time to little purpoſe, to prove what is ſo generally known; the learned Selden, in his Uxor Ebraica, ſhews fully that a plurality of wives was not only allowed of among the Hebrews, but amongſt almoſt all other nations, and in all ages. In the Eaſt it was almoſt univerſal as it remains at this day. The ancient Romans indeed did not practice it, though it was not prohibited. Mark Anthony, I think, was the firſt who led the faſhion of having two wives. This faſhion laſted between three and four hundred years, when it was prohibited by an expreſs law, under the reign of Theodoſius. The emperor Valentinian however permitted it in a fuller extent; nor did the chriſtian biſhops of thoſe times make any oppoſition to this reintroduction of polygamy. Juſtinian and the latter councils put a ſtop to it.

In

In saying "Thou shalt not commit adultery" the law did not say thou shalt not have more than one wife: as it does when, respecting idolatry, it says "thou shalt have no "other God but me." It said, thou shalt not lie with another man's wife; it did not say, thou shalt not lie with as many wives as thou wilt of thy own. On the contrary, it appears to have been commonly permited to have two or more. "If a man have two "wives one beloved and another hated, &c." Deut. xxi. 15. And again, II. Sam. xii. 8. The prophet Nathan, reproaching David, says, "thus saith the Lord God, I gave thee "thy master's house and thy master's *wives* "into thy bosom."

It is true that, after the world became to be somewhat populous, and perhaps some communities apparently too numerous for the land they possessed,* the practice of polygamy

* There are writers indeed who have laboured to prove that polygamy does not tend to population. But, however ingeniously they have argued, they have contradicted

was prohibited by the civil magiſtrate, for the political ends of ſociety.

According to the laws of Juſtinian, it was not lawful to have two wives at a time, nor even a concubine with a wife. The canons of the church alſo confirm this prohibition, under pretence of its being founded on the words of our Saviour, in his reply to the phariſees. But, if we turn to the text, we ſhall find that no ſuch prohibition is there either expreſſed or implied.

"I ſay unto you, whoſoever ſhall put "away his wife, except for fornication, and "ſhall marry another, commiteth adultery." Matt. xix. 9.

all the experience both of ancient and modern times. If there are ſome countries, in which at this day polygamy is allowed, and yet they are not more populous than others where it is prohibited; the fact may be accounted for, by various others reaſons. The deſolation, occaſioned by the plagues, wars, famine and licentiouſneſs of thoſe countries, would probably have long ſince depopulated them entirely, had not polygamy been allowed.

Very

Very true, but if, *without putting away his wife*, he marry another (as was the caſe with Jacob; when after marrying Leah, he married alſo her ſiſter Rachel) it does not appear that he would commit adultery.

It is the putting away the firſt wife only, that made the marrying a ſecond, adultery. Nor is even this a direct commiſſion of that ſin, but an indirect one; as ſuch diſmiſſion of the firſt would naturally tend to make her form a connection with ſome other man; which would be direct adultery. This is plain from the words, in which the ſame prohibition is expreſſed in another place, by the ſame evangeliſt,

"I ſay unto you, that whoſoever ſhall put "away his wife, ſaving for the cauſe of for- "nication, *cauſeth* HER *to commit adultery.*" Matt. v. ver. 32.

It is true that ſome of our moſt learned divines have been of opinion that the adultery

lay in mrrrying the ſecond wife and not in the putting away of the firſt. But in this, they have ſhewn themſelves to be better canoniſts than caſuiſts. Even Biſhop Coſens ſays, it is not the diſmiſſion of the firſt wife that is adulterous but the marriage of the ſecond. But this is clearly a miſtake; not only, becauſe polygamy was allowed at the time when our Saviour's injunction, reſpecting a man's putting away his wife, was promulgated; but becauſe the contrary appears on the very face of the text.

The phariſees did not aſk Jeſus about the lawfulneſs of a plurality of wives; but merely about putting away their wives: and though he anſwered them in a fuller manner than they ſeemed to require, he cannot be ſuppoſed to miſtake the full drift and ſenſe of their query.

The queſtion was, "Is it lawful for a "man to put away his wife for every cauſe?" The reply is, "Whoſoever ſhall put away "his

"his wife, except for fornication (and ſhall "marry another) commiteth adultery." That is indirectly, by depriving her of the protection of a huſband, and reducing her to the neceſſity of accepting that of ſome other man; agreeably to the words of the text before quoted, "cauſeth her to commit adultery."

Our Saviour indeed goes farther and explains his meaning diſtinctly in adding, "And "whoſo marrieth her which is put away, doth "commit adultery." But how ſo, unleſs the criminality depended on the incapacity of the firſt huſband to put her away? This indeed made it adultery in the man marrying a woman thus unjuſtly divorced, becauſe ſhe was ſtill the firſt man's wife, and not lawfully ſeparated.*

* The legality of the divorce appears evidently to depend on the fornication, on the part of the woman, which ipſo facto diſſolved the marriage; or, what amounted to the ſame thing, gave the huſband a right to do it, at pleaſure by giving his bill of divorce; and this ſeems to be particularly expreſſed in reply to the queſtion, "whether a man might put away his wife for *every cauſe*;" and alſo to the additional queſtion, "why then did Moſes com-"mand, to give a writing of divorcement, and to put her "away," i. e. for every, or any, cauſe.—It is this cir-

That this was certainly the meaning of our Saviour, cannot be doubted. "Moſes," ſays he, "becauſe of the hardneſs of your hearts, "ſuffered you to put away *your wives*." Or rather, as the tranſlators have more properly expreſſed it in Mark chap. x. ver. 5, "For the hardneſs of your *heart*."

A mere Engliſh reader might, from the former expreſſion of Matthew, take occaſion to ſay, that the term *wives* in the plural, is no more applicable to the individual than that of *hearts*; and that the former word, as well as the latter, muſt be meant of their wives collectively and not of the wives of each

cumſtance, viz. the facility of men's divorcing their wives at pleaſure, that accounts for the non-uſage of polygamy in countries, where it was allowed by law. It has been already obſerved that the ancient Romans did not indulge themſelves in polygamy, though permited; but this was for a good reaſon; they wiſely choſe not to have two wives in the houſe at the ſame time, and therefore repudiated one, before they took another; and this they did as often as they pleaſed, with no other formality than that of ſending a meſſage to the wife, by a ſlave, giving notice of their intentions, after the manner of the Hebrews.——

ſeverally;

ſeverally; but the original is in both places the ſame πρὸς τὴν σκληροκαρδίαν ὑμῶν. Beza has it *pro duritia cordis veſtri, for your hardneſs of heart*, in the ſingular number; but it is *dimittere uxores veſtras, put away your wives* in the plural; conformably to the original τὰς γυναῖκας ὑμῶν.

That this is the true ſenſe of the text, is farther confirmed by the remark, which the diſciples of Jeſus made on it, in the ſucceeding verſe.

It runs in the vulgar tranſlation thus: "If "the caſe of *the man* be ſo with *his wife*, it is "good not to marry.

But the verſion is here alſo palpably defective. By *the man* may be miſtakenly underſtood a particular *huſband*; and by *his wife*, may, in like manner, be underſtood *his* ſole and only wife; but the word *his* is foiſted into the text; it is indeed uſually printed in Italics, to denote the interpolation. This pro-

hibition is expreſſed, on the contrary, in the moſt general terms. "Si tale eſt negotium hominis cum uxore," ſays Beza: conformably to the original: Εἰ οὕτως ἐςὶν ἡ αἰτία τῦ ἀνθρώπε μετὰ τῆς γυναικὸς; not the particular caſe between any one huſband and his ſole wife; but the matrimonial commerce (negotium) between the ſexes in general; or, as Paſor explains it, the condition or relative ſituation of a huſband reſpecting his wives. *Si ea eſt conditio viri*, &c.*

If any other argument were neceſſary, to eſtabliſh the ſenſe of this reply, which our Saviour gave to the deſigning phariſees; perhaps ſome confirmation of it may be drawn from the queſtion, put to him by the ſaducees, with a deſign equally ſiniſter.

A woman ſaid they, ſucceſſively married ſeven huſbands; at the reſurrection, whoſe wife ſhall ſhe be?—Had a plurality of wives

* Paſori Lexicon, in loco.

not

not been permited by the divine law, it would have better anſwered their end, if they had propoſed the ſame problem, with a change of terms: aſking him, if a man had ſucceſſively ſeven wives, to which of them, at the reſurrection would the huſband belong?

But I am not pleading either for the piety or morality of polygamy. Under the chriſtian diſpenſation, and in times like theſe, I conceive one wife to be enough, if not too much, for any one man. Add to this that, whether it be contrary to the law of God or not, it is expreſſly contrary to that of man; being forbidden in England by the written laws of the land.*

* It may not be amiſs, however, to obſerve here that we are full as incorrect in the modern uſe of the word *polygamy*, as I have before obſerved we are in that of the word *adultery*. Polygamy, ſays Burn, is where a man has ſeveral wives at the ſame time. He then proceeds to ſtate the act of parliament, in which the word *perſon* is uſed, and a huſband or wife is made equally culpable; as if he had defined polygamy, agreeable to its etymology and ancient ſignification.

In like manner, Mr. Locke defines polygamy to be "the having more wives than one, at once." But this

From

From the foregoing arguments, however, I take upon me to infer that matrimony, as a divine ordinance, inſtituted in the days of man's innocency, was originally ordained, as is expreſſly ſaid, for the ſake of ſociety and the procreation and education of children; to hinder man from being alone; for the peopling of the earth; and for no other direct cauſes civil, moral or religious.

It will alſo hence follow that ſuch married perſons, as ſo live together as to anſwer theſe great ends, of the divine inſtitution, may be ſaid to fulfil their matrimonial contract according to God's holy ordinance.

definition reſpects the modern, vulgar uſe of the word; and is defective, if we regard either the Greek etymology πολυγαμια, q. d. marriage with many;* or the ſtatute, which ſubjects the woman to the ſame penalty as the man; abſurdly indeed enough; becauſe it is a felony within the benefit of clergy; ſo that, by the letter of the law, the woman muſt ſuffer death for what the man ſuffers only a burning in the hand, unleſs the woman alſo be ludicrouſly allowed the benefit of clergy too.

* As to the acceptation of the term in Greek, it is affirmed, by J. Pol. Onom. l. iii. to have been a word applicable to either ſex. See Harry Stephens's appendix ad Theſaur. Conſtantin.

Now,

Now, not to dwell on the many phyſical and moral reaſons, which might be brought, to prove that adultery, in the female, operates directly againſt the chief ends of this divine inſtitution; the univerſal principles and practice of the patriarchs and ſages, both under the law and the goſpel, ſufficiently confirm it, by their prohibitions and injunctions againſt this crime; while mere concubinage or fornication in the man, has been conſtantly connived at or expreſſly permited.

Indeed the great and principal end of marriage, procreation, which may be juſtly ſtiled the firſt commandment given by God to man, in the words "increaſe and multiply," was ſo religiouſly obſerved by the ancient patriarchs, that the raiſing up ſeed unto Abraham, was ſo ſtrictly and ſolemnly enjoined to his poſterity, that it was not to be neglected by the man; becauſe his wife might happen to be indiſpoſed, or unmeet, to cooperate with him for that great purpoſe.

The

The conduct of Abraham and Sarah, reſpecting her Egyptian handmaid Hagar, proves the due ſenſe, they had of the nature of God's holy ordinance of marriage; inſtituted, as our matrimonial ſervice ſays, in the days of man's innocence.

The behaviour of Jacob alſo and his two wives Rachel and Leah, is a farther more forcible confirmation of the ſenſe, in which the duties of marriage were held under the patriarchal diſpenſation. During their temporary barrenneſs, both Rachel and Leah gave to their huſband their reſpective handmaids Bilhah and Zilpah; nay Leah expreſſly imputes the cure of her ſterility to this act of duty and complacence. "And God hark-
"ened unto Leah and ſhe conceived and bare
"Jacob the fifth ſon.——And Leah ſaid,
"God hath bleſſed and given me mine hire,
"becauſe I have given my maiden to my
"huſband."*

* Gen. chap. xx. ver. 18.

But

But, though concubinage, now called fornication, was then deemed not only lawful in the huſband, but the contributing to it, in caſe of barrenneſs, meritorious in the wife, we find the act of adultery, or lying with another man's wife, univerſally regarded with horrour, even among the Egyptians and Philiſtines. Thus when Abraham denied Sarah to be his wife, and ſaid ſhe was his ſiſter; in conſequence of which ſhe was taken from him by Abimelech, the prevention of adultery was deemed of ſo important and momentous a concern; that God himſelf is ſaid to have appeared in a dream, by night to Abimelech; ſaying, "Behold thou "art a dead man, for the woman thou haſt "taken; for ſhe is a *man's* WIFE!"*

Again, when Iſaac went up, on account of a famine in his own country, to dwell

* Gen. chap. xx. ver. 3. Abimelech's reproaches, verſe 9th of the ſame chapter are alſo very forcible and ſtriking. In the xiith chap. of Geneſis, we have alſo another inſtance of the like kind; where God is ſaid to have plagued King Pharoah and his houſe with great plagues becauſe of Sarah, Abram's wife. Verſe 17. et ſeq.

in Gerar, and denied, in the ſame manner, his wife Rebekah; ſaying alſo that ſhe was his ſiſter; he received a ſevere rebuke from Abimelech for thus laying his people under the temptation of inadvertently commiting even unintentional adultery. "And it came "to paſs when he had been there a long time, "that Abimelech king of the Philiſtines look-"ed out at a window, and ſaw, and behold, "Iſaac was ſporting with Rebekah his wife. "And Abimelech called Iſaac, and ſaid, be-"hold, of a ſurety ſhe is thy wife: and how "ſaid'ſt thou, "ſhe is my ſiſter?" What "is this thou haſt done unto us? one of the "people might lightly have lien with thy "wife, and thou ſhould'ſt have brought guilti-"neſs upon us."*

Now, it will hardly be pretended by either our canoniſts or divines, that Abraham, Iſaac, and Jacob, though polygamiſts and *fornicators* (to ſpeak our modern language) did not live in the ſtate of matrimony, according

* Gen. chap. xxvi. ver. 8. et ſeq.

to

God's holy ordinance, if that ordinance was, as is expreſſly ſaid in the matrimonial ſervice of the church of England, inſtituted in the days of man's innocency!

The prohibition of polygamy and concubinage is a mere moral and civil, prohibition, of much later date than the days of man's innocency, or thoſe of the patriarchs.

The pretence that marriage was inſtituted for the ſecond cauſe, aſſigned in the matrimonial ſervice, is therefore evidently falſe.

Not but that the lawful liberty, taken by a huſband in concubinage may degenerate into lawleſs licentiouſneſs; and be carried ſo far as to make him neglect the duties of the marriage-bed, the ſociety of his wife, and the procreation and education of his children; if it ſhould prevent his loving and cheriſhing her, ſo far as is requiſite to anſwer theſe the real ends of the matrimonial inſtitution, ſuch huſband is guilty of a breach of his matrimonial vow,

and

and is *in foro conſcientiæ* highly reprehenſible: nay, if his neglect of the nuptial duty be open, groſs and wilful, the *court-chriſtian* may take cognizance of it; and, at the wife's requiſition, decree a reſtitution of conjugal rights;* which the huſband cannot in law, or conſcience, refuſe to comply with.

At the ſame time, it muſt be admited that men, entering into the matrimonial ſtate without comprehending the terms of the contract, which is the lamentable caſe of many, ſuch men, thinking they are thereby bound in conſcience to live a life of perfect chaſtity are certainly reprehenſible *in foro conſcientiæ* if they are guilty of incontinence; though as to others, who know the preciſe meaning of the terms and extent of the ſaid contract, it is enough that they fulfil it according to the purport, intent and meaning of thoſe terms.

* See Blackſtone, on private wrongs. Commen. Book iii. chap. 7.

Having

Having thus ſtated the caſe of adultery and divorce, as deducible from the canons of the church, and the practice of the ſpiritual court; as well as the nature of the matrimonial contract, as it is entered into by proteſtants, married according to the ceremony preſcribed in the ritual of the church of England; I come now to conſider how far the foregoing reflections are applicable to the preſent important cauſe, depending between Lord and Lady Groſvenor.

The editor of the Depoſitions has thought proper to make an apology, for obtruding his very extraordinary publication on the world. Indeed it was not altogether unneceſſary, though not, I think, for the reaſons given.

" The great importance of the cauſe, in the proceſs of which the following depoſitions have been taken," ſays he, " hath excited ſo univerſal an attention, that an apology may eaſily be made for their publication,

by thoſe, whoſe profeſſion it is to contribute to the gratification of publick curioſity.

It may be objected, indeed, that ſuch publication, *pedente lite*, while the cauſe is depending, is, in ſome meaſure, an anticipation of the trial, and an unfair method of prejudging the merits, and influencing the publick opinion, in favour, or to the prejudice, of the contending parties. But beſides that the wiſdom and impartiality of our judges are too great to be influenced by popular prepoſſeſſion, it is to be obſerved that the veracity of depoſitions, till controverted in a court, is at beſt problematical; the validity of their evidence depending on the judicious inveſtigation of its degree and quality, and the final reſult which thence determines the deciſion of the judge."

It is to be hoped, becauſe it muſt not be doubted, that the compliment, which the writer pays the impartiality of our eccleſiaſtical judges, is well founded. I wiſh I could

could ſay as much in favour of the practice of the courts, which, for the reaſons already given, I cannot help thinking, ſavours too much of the ſtar-chamber and popiſh inquiſition, to be much longer tolerated without ſome modification, to render it leſs odious in a proteſtant country.*

The above mentioned apologiſt, however, miſtakes if he thinks that any popular prejudication in this caſe, is either unfair, or can injure the innocent or indeed either party. In the courts of law, 'tis true, when a jury are the judges, and the witneſſes are examined *viva voce* in court, the ſtate of the evidence is never known till the day of trial;

* By refuſing a divorce, even when both parties are proved equally guilty of adultery, the courts-chriſtian do not by any means enforce obedience to God's holy ordinance, if chaſtity and conjugal affection be ſaid to conſtitute any part of it. The forced cohabitation of an adulterer and adultereſs is little likely to tend to the honour of the marriage ſtate, or the ſoul's good of either. And yet Salkeld and Blackſtone aſſure us, that the ſpiritual courts act *pro ſalute animarum*, and with no other view.

and therefore it is very unfair to prepoſſeſs the minds of the publick, and of courſe the jury, with an imperfect and defective, if not falſe, notion of the cauſe.

It is very different with cauſes, that are to be determined in the eccleſiaſtical courts; where the evidence is taken down in writing as in the court of chancery, and the ſeveral depoſitions of the witneſſes, are after a certain term made publick in court. On this publication the general ſtate of the evidence * is known, and no reflections or reaſonings whatever on ſuch evidence, can at all be injurious to the cauſe. For, if they be fairly deduced from the premiſſes, laid down in the depoſitions, they will accord with the deciſion of the judges; if unfair and ſophiſtical, their ſophiſtry will be rea-

* It is true that, in ſome caſes, ſuch evidence is permited to be corroborated by ſubſequent or additional evidence; but hardly any thing material is ever advanced, after the expiration of the term-probatory, and the conſequent publication of the depoſitions.

dily

dily detected by the penetration of thoſe judges; whoſe learning and capacity place them far above the level of an unlearned, and perhaps illiterate, jury.

I ſhall for my own part, therefore, make no apology, for proceeding to ſuch obſervations on the ſtate of the evidence, as it appears from the depoſitions, thus regularly publiſhed in the preparatory courſe of the cauſe.

It is ſet forth in the libel, or original declaration, of Lord Groſvenor, that his Lady hath been guilty of adultery with his Royal Highneſs the Duke of Cumberland; and therefore he prays the court to do him juſtice, by granting him a divorce.

The conſequence of Lord Groſvenor's obtaining his ſuit, is obviouſly fatal to the lady; who, being charged with adultery, would in that caſe, of courſe be deprived of her right of dower, if not of alimony.

To prevent this taking place; the Lady, exhibits an allegation againſt her Lord; charging him with adultery in turn; praying in like manner for a divorce, for the reaſons ſo alledged; by which ſhe may preſerve her right of dower, though divorced.

The prayer of the allegation is, by ſome, thought to be merely formal; the charges ſet forth being intended only to operate ſo far as to prevent his Lordſhip's obtaining a divorce; unleſs it can be ſuppoſed that the Lady will be able to prove adultery on her Lord, and that he will not be able to make good his charge againſt her; which, after a verdict has been obtained againſt the royal adulterer her ſeducer, from an Engliſh jury, in a temporal court, will hardly be preſumed.

Not but that the Lady's lawyers may poſſibly hope for better ſucceſs, in the courts ſpiritual than temporal. Let the cauſe go which way it will, they will be gainers. It

is their intereſt, therefore, ſo to manage it, as to compel the parties to run the gauntlet of appeal.

I cannot think, however, that the prayer of the allegation is merely formal, or that it is intended to operate ſo far only as to prevent a divorce. The prevention of a divorce might be as diſagreeable to the lady as to her lord; as ſhe would be then abſolutely in the power of an injured huſband, who might compel her to return; and, without leting her ſit at table or having any government of his family, confine her all her life-time to her chamber. Lord Raymond ſays, of a wife in a ſimilar caſe, "ſhe deſerves no better uſuage." This is hardly what is aimed at by the Lady.

It is plain ſhe is adviſed to pray a divorce in her own right, in doing which, if ſhe can in any tolerable degree ſupport her own allegation or invalidate the evidence brought in ſupport of the libel, the eccleſiaſtical judge

will decree her ſuch alimony as to him ſeems meet, and her right of dower will remain unforfeited. For I know not any power that can compel the judge to declare on what ground, or at the prayer of which party, he grants the divorce; if the merits of the libel and allegation be entered into together. So that, though in caſes of adultery on the part of the wife; ſhe forfeits her right of dower; yet, by the courts admiting the plea of female recrimination, with the prayer for divorce grounded thereon, and blending the complaints of both huſband and wife together, it cannot be determined whether the divorce is granted for the cauſe of adultery or not?

The huſband, it is true, may by this means get rid of his wife, but he will be obliged not only to ſubmit to the terms of alimony and ſeparate maintenance, which the ordinary pleaſes to impoſe; but his divorced wife will not be deprived of her right of dower.

Viner indeed ſays that, although a huſband and wife be ſeparated, yet, if the huſband maintains the wife, it bars her claim in reſpect of alimony.* But I doubt whether, after the order for alimony decreed by the ordinary, on the determination of a ſuit for divorce, a prohibition from the temporal court would be granted. It was denied, it ſeems, in one Hyat's caſe, quoted in the books; though the huſband offered ſecurity for her maintenance and good uſage But this was in a caſe *propter ſævitiam*, for ill uſage, on the part of the huſband. Adultery on the part of the wife, ought to make a great difference. And yet, according to the ſtrange maxims of modern practice, it ſeems to make little or none. Burn tell us that a divorce *a thoro et menſa*, with right of alimony and dower, is allowed "in caſes of adultery, cruelty or the like;"—as if adultery in the wife as juſtly entitled her to a ſeparate maintenance from her huſband, as *his cruelty* to *her*. What monſtrous abſurdity! And

* Vin. Baron & Feme X. a.

yet

yet Burn, without making any diſtinction reſpecting the cauſe of divorce, proceeds thus. "Nor doth this kind of divorce either bar "the wife of her dower or baſtardize the chil- "dren; but entitles her to alimony; which "the eccleſiaſtical court aſſigns, in proportion "to the circumſtances and condition of the "huſband." [Obſerve, not in proportion to the demerit of the wife!] "And no prohibition will lie." What encouragement doth not the ſpiritual court here give to adultery, in the wives of men of opulence and fortune! In what a critical ſituation do not huſbands among our nobility and gentry ſtand, who are married to young and handſome wives, in this age of gallantry and diſſipation!

Such is nevertheleſs, the real ſtate of the caſe; as appears ſtill more fully from Blackſtone. "With us in England, ſays he, adul- "tery is only a cauſe of ſeparation from bed "and board; for which the beſt reaſon that "can be given, is, that, if divorces were "allowed to depend upon a matter within the

"power

" power of either of the parties, they would " probably be extremely frequent; as was the " caſe when divorces were allowed for cano- " nical diſabilities, on the mere confeſſion of " the parties, which is now prohibited by the " canons. However, divorces *a vinculo* " *matrimonii*, for adultery, have of late years " been frequently granted by acts of parlia- " ment.—In caſe of divorce *a menſa et thoro* " the law allows alimony to the wife; which " is that allowance, which is made to a wo- " man for her ſupport out of the huſband's " eſtate; being ſettled at the diſcretion of the " eccleſiaſtical judge, on conſideration of all " the circumſtances of the caſe. This is ſome- " times called her *eſtovers*; for which, if he " refuſes payment, there is (beſides the ordi- " nary proceſs of excommunication) a writ at " common law *de eſtoveriis habendis*, in order " to recover it. It is generally proportioned " to the *rank* and *quality* of the parties." [Ob- ſerve again, it is not proportioned to the *merit* or *demerit* of the parties!]

But

But here the words of this great and able lawyer put me to a ſtand. He adds, "but in "caſe of elopement and living with an adul- "terer, the law allows her no alimony."

To what, then, ſhall we impute a moſt eſſential circumſtance, that appears on the face of the proceedings in this cauſe? Shall we impute it to deſign or neglect? To the humanity and generoſity of the noble proſecutor, or to the inattention of his buſy lawyers? Among the numerous depoſitions, tending to prove adultery on the Lady, as the cauſe of divorce there is not one tending to prove her elopement and living with the adulterer, as a reaſon for depriving her of alimony and dower. And yet nothing is ſaid to be more notorious than ſuch elopement and cohabitation.*

* Particularly during her reſidence at Barnes in Surry; and in Charles Street St. James's Square, where the lady lived in a houſe belonging to one Macky, formerly a footman in her father's family.

By

By what law, alimony is in this caſe denied the adultreſs, except by the practice of the eccleſiaſtical court; which may be over-ruled by the judge, I cannot ſay;* but I reſt for this on Blackſtone's very ſuperior authority. As to the matter of dower, the adultreſs forfeits it under the circumſtances above-mentioned by expreſs act of parliament.

By the ſtatute of 13 Ed. I. ſ. 1. c. 33. "If a wife willingly leave her huſband, and go away, and continue with her advouterer, ſhe ſhall be barred for ever of action to demand her dower that ſhe ought to have of her huſband's lands, if ſhe be convict thereupon, except that her huſband willingly, and without coercion of the church, reconcile her and ſuffer her to dwell with him; in which caſe, ſhe ſhall be reſtored to her action.

The commentators on this ſtatute explain it with a force, peculiarly applicable to the pre-

* Dr. Blackſtone refers to Cowel; but I have him not at hand. That the right of dower and alimony does not always go together, ſeems plain.

ſent

ſent caſe. Thus as to her *willingly leaving* her huſband and *continuing with* her adulterer, they ſay "Albeit the words of this branch be "in the conjunctive, yet if the woman be "taken away not willingly, but againſt her "will, and afterwards conſent, and remain "with the adulterer without being recon-"ciled, ſhe ſhall loſe her dower; for the "cauſe of the bar of her dower is not the "manner of the going away, but the re-"maining with the adulterer in avowtry "without reconciliation; that is the bar "of the dower.—Albeit ſhe do not continu-"ally remain in avowtry with the adulterer, "yet if ſhe be with him and commit adul-"tery, it is a tarrying within this ſtatute.— "And if ſhe once remain with the adulterer "in avowtry, and afterwards he keepeth "her againſt her will; or if the avowterer "turn her away, yet ſhe ſhall be ſaid to "continue with the avowterer within this "ſtatute.*

* Burn E. L. vol. II. p. 438. Alſo 2 Inſt. 435.

There

There can be no doubt of the proſecutor's being able to make proof, of his lady's ſtanding in this terrible predicament; had it been an object of his vengeance or his ſolicitor's attention.

It appears, from this circumſtance, that there is leſs reſentment, or greater tenderneſs in the proſecution of this ſuit, than one would imagine would be felt on the part of an injured and provoked huſband.

The great object of Lord Groſvenor's action ſeems to be the obtaining a divorce from his wife; which, as the lady has on her part prayed likewiſe for a divorce from her huſband, ſeems neceſſarily to be required either at the prayer of one or the other,

For, if a divorce be refuſed to the prayer of the huſband, either his libel againſt the wife muſt be deemed inſufficiently proved or the wife's allegation againſt him be deemed

to

to offer a ſufficient compenſation for her crime.

Again, ſhould a divorce be refuſed to the prayer of the wife, ſhe muſt be deemed either guilty of the charge laid againſt her, or incapable of making good her charge againſt the huſband.

It will hence follow that a divorce muſt be granted either to the petition of huſband or wife. For, if it be refuſed the huſband, becauſe the charge againſt the wife is not proved, the wife has a right, as before ſhewn, by the canons, to a divorce for that ill-ſuppoſed accuſation; and, if it be refuſed the huſband becauſe the proof of the wife's allegation is ſufficient and competent; this ſhould certainly be no bar to the petition of the wife.

On the other hand, if a divorce be refuſed to the prayer of the wife, becauſe ſhe is proved

an

an adultereſs, this certainly ſhould not bar the petition of the huſband; much leſs ſhould his petition be rejected, becauſe ſhe cannot make good her charge againſt him.

Laſtly, If a divorce be denied, becauſe both libel and allegation are ſufficiently proved, the eccleſiaſtical judge would take upon him to refuſe a divorce for the only reaſon, which our Saviour expreſſly gave for allowing one, viz. adultery!

The reader will probably form ſome judgement of what will be the event of this important ſuit; by applying the foregoing obſervations to the ſtate of the evidence, as it appears in the depoſitions.

To conſider firſt that of the witneſſes on the ſide of his Lordſhip.

The point, and indeed the only point as I have obſerved, which the depoſitions, in ſupport of the libel, appear calculated to prove,

is the crime of adultery on the part of the lady. Now this proof depends on the nature and probability of the facts and circumſtances given in evidence, and on the number, competence and credibility of the witneſſes affirming them; on all which we ſhall make our occaſional remarks.

As to the nature of the facts, reſpecting the Lady, it is indiſputable, that if ſhe be proved to have had perſonal commerce * with any man but her huſband, ſhe is unqueſtionably found guilty of adultery.

* Every reader will underſtand what is meant by this expreſſion; I hope the lawyers therefore will not think it quaint or affected. But the writer confeſſes himſelf exceedingly diſguſted at the abſurd formality of making coachmen, footmen and poſtilions, depoſe, merely from diſtant circumſtances, that they believe the perſonages ſpoken of, to have then and there had the carnal knowledge of each other's bodies. Can the belief of ſuch witneſſes in ſuch a caſe have the leaſt influence over the court, beyond what the circumſtances, depoſed to, would have on it were this odious formality omited? certainly not.

It is indeed ſhameful to think that, from ſuch groſs improprieties being admited into the depoſitions taken in the ſpiritual court, the publications in Doctor's Com-

The

The legal conſequence of which is, as before obſerved, a divorce, at the prayer of her huſband, with deprivation of her right of dower, if not of alimony.

To prove the lady guilty of this fact, we have in the depoſitions before us, a repetition of the evidence; given on the trial at law between her Lord and his Royal Highneſs the Duke of Cumberland; corroborated by the teſtimony of other witneſſes, tending to ſtrengthen the preſumption on which a verdict was found for his Lordſhip. I ſay preſumption, becauſe however credible the circumſtantial evidence of a cloud of concuring witneſſes; yet, without any direct or poſitive

mons, when republiſhed in Pater-noſter-Row, are bought up like the moſt licentious ribaldry, and devoured by the vulgar with the utmoſt avidity.

It is ſcandalous that the proceedings of a ſpiritual court ſhould have ſo immoral and profligate a tendency; but this is a remnant of its popery; for it is juſtly obſerved by Dr. Blackſtone, that ſome of the impureſt books, that are extant in any language, are thoſe written by the Popiſh clergy on the ſubjects of matrimony and divorce. Com. Book III. chap. vii.

oath to the preciſe act, ſuch evidence is ſtill, what the lawyers call preſumptive.

In the preſent ſuit depending in Doctors Commons, it is true, this concurrent teſtimony is confirmed by poſitive oath to the preciſe act; but, as it is poſſible that ſuch oath, however poſitive, might not have the ſame weight without the corroborating circumſtances of the preſumptive proof; we ſhall juſt take a ſlight retroſpect of the nature and credibility of the latter.

It is certain that improbable facts may happen to be true while probable ones are falſe; and yet probable facts ever require a leſs degree of proof than thoſe which are improbable. The credibility of evidence therefore depends not only on the character of the witneſſes, but alſo on the probability of the facts aſſerted.

Mr. Dunning was of opinion, or at leaſt ſo affected to be, that the evidence on the trial

trial at law was not ſufficiently preſumptive. "It will not afford," ſaid he, "that violent pre-"ſumption which affords full proof." I cannot, however, join with this learned caſuiſt in thinking that "thoſe circumſtances which "ſupport a violent preſumption import a "full proof, or what is tantamount." And yet I think a violent preſumption will, in many caſes, warrant a verdict, particularly in ſuch as the preſent, in which full proof is ſo very ſeldom to be obtained.

A jury, convinced of the credibility of the witneſſes, and of the neceſſary tendency of the circumſtances to the fact in queſtion, are not only warranted, but it is their duty, if they conſcientiouſly diſcharge their oath, to find a verdict accordingly. It is the ſame with a judge in courts where juries are not impannelled.

Now it muſt be owned that many of the circumſtances, advanced on the above mentioned trial and repeated in theſe depoſitions, are extremely ſuſpicious and improbable.

The preciſe act, indeed, I am very ſorry to ſay, carries with it, in theſe days of gallantry and licentiouſneſs, no very great improbability; but the preparatory and attendant circumſtances of it are, ſome of them, too improbable to be believed, but on the moſt credible and circumſtantial evidence.

To enumerate ſome of the principal, with the evidence on which their credibility is founded.

Is it probable that a prince of the blood-royal, a brother, a councellor, to the monarch actually on the throne, ſhould be ſo totally void of ſenſe, ſpirit and delicacy, as to make himſelf the companion of his porter, Giddings, and his man John; travelling about the country in diſguiſe, under the alternate appearances of a Welſh farmer, a country ſquire, an interpreter to a horſe-dealer, nay an ideot; that he ſhould give his porter the name of Truſty and Tuſh; and he himſelf aſſume the appellations of Morgan, Jones, Griffen, Tuff, and what not;

not; playing even the fool with ſo bad a grace, as to run in danger of being apprehended for a ſharper or a highwayman? Are all, or is any one, of theſe things, I ſay, probable?

Yet they are all confirmed on oath, by ſo many different, and apparently diſintereſted, witneſſes, that their credibility is eſtabliſhed beyond all doubt: on which a ſtill greater improbability ſuggeſts itſelf, if it be preſumed he undertook ſo abſurd and prepoſterous an expedition merely for an innocent amuſement, when by the ſame evidence it appears that his motions were regulated by thoſe of the lady, during the whole courſe of his journey: when it is proved that he even attended her to the country-ſeat of her Lord; which he aſſiduouſly haunted in diſguiſe, ſkulking about in ſheds and hovels and hiding himſelf behind trees, like a deer-ſtealer or a vagabond intent on robbing the poultry yard. If it be improbable a great prince ſhould ſtoop to ſuch meanneſs; is it not, I ſay, ſtill more

improbable, he ſhould do it, for any innocent or laudable purpoſe?

Is it probable that a perſonage, in ſo exalted a ſtation, ſhould have ſo little regard for common decency, as to take advantage of the abſence of the Lord of the manſion, to proſtitute its ancient walls, hitherto renowned for their ſanctity, to the infamous purpoſes of a common brothel?

God proſper long from being broke
The Luck of Eaton Hall!

Was the votive prayer of a famous old ballad, for the ſafety of that feſtive bowl, whoſe preſervation was dear to the family, as the emblem of its honour and hoſpitality. It was preſerved for ages; but how frail, how fragile, that veſſel of family honour, which depends, in theſe days, on the prudence or conſtancy of a woman!——

Again is it probable that a prince of the blood royal, a military officer, and a man of pro-

profeſſed gallantry, ſhould be ſo deſtitute of pride, reſentment and courage, (I will not proſtitute the word honour on this occaſion) as to ſtand trembling, when detected in the lady's chamber at an inn, by her rudely-intruding ſervants; whom he ſubmiſſively addreſſed by the name of *gentlemen*; "imploring they would do him no harm?"

Is it probable that, when releaſed from his fears of being toſſed in a blanket, this royal lover ſhould muſter up magnanimity enough to tell a palpable fib, nay, uſing the language of the loweſt vulgar, offer to take his bible oath* he was not in the room, which he had juſt left; pretending that he came to the Lady's aſſiſtance, when he had not the ſpirit either to

* Mr. Dunning, ſays, this expreſſion is much more likely to have been invented by the evidence; it being a farce to ſuppoſe people of the prince's high rank capable of making uſe of ſuch terms.—It was indeed a farce, and that of the loweſt kind, in which his highneſs was acting the moſt pitiful character; nor does it appear that his literary qualifications at all prevented his topping his part.

protect

protect her, or ſhew the leaſt reſentment for the affront thus put upon himſelf?

Is it probable that, when this royal gallant ſaw into what a critical ſituation the detection of his amour had plunged the woman, whoſe weakneſs had contributed to his momentary happineſs; is it even poſſible, I ſay, that he ſhould abandon her in ſuch circumſtances; leaving her, for ought he knew, to the immediate conſequences of the rage of an injured huſband; while he ſneaked away himſelf, conſulting his own ſafety, regardleſs of her fate?

That theſe things are poſſible, however improbable, is confirmed by the undiſputed, as well as indiſputable, evidence of numerous witneſſes.

I ſhall mention but one more improbability or the part of his Royal Highneſs. Is it at all probable that his ſhare of the epiſtolary correſpondence, produced on the above mentioned

tioned trial and referred to in the depoſitions, could be really carried on in ſo miſerably-illiterate and vulgar a ſtile by a prince of his Highneſs's talents and education?—And yet that this correſpondence is genuine was admited by his counſel on the trial, and is confirmed in the depoſitions before us, by thoſe of his preceptor, and ſecretary, reſpecting his hand-writing: which we find however to be, like the mark of ſome of the witneſſes, ſo very doubtful that even his preceptor only knew it from circumſtances.*

On the part of the Lady there do not appear ſo many, nor ſuch flagrant, improbabilities. The attachment which her relations ſeem to have all had to the royal family; and the fear of being backward in their duty, very probably urged the Lady too forward, for the duty ſhe owed her Lord. There is another circumſtance, which brings with it ſome

* See printed depoſitions. Particularly thoſe of Meſſrs. Du Val and Le Grand.

excuſe

excuſe for the criminal,* while it accounts for her crime. It appears as well from the conduct as the correſpondence of the lovers, that nature has beſtowed on both a greater ſhare of paſſion than reaſon. The fools of nature are in ſome meaſure privileged. In Turkey they are revered. In England may they not be forgiven? Were not the conſequences of their folly ſo fatal, they poſſibly might! Idiotiſm is a kind of inſanity, and both, like charity, hide a multitude of ſins. The advice of the poet may ſeem pertinent to the lady.

Were you, ye fair, but cautious whom ye truſt;
Did you but think how ſeldom fools are juſt;
So many of your ſex would not in vain
Of broken vows and faithleſs men complain!

But when unhappily the intellects of the Califta are weak as thoſe of her Lothario, all good counſel is thrown away.

* For ſo I call her, in conſequence of the verdict of the ſpecial jury on the trial at law at Weſtminſter.

At

At the ſame time it may not be improper to obſerve that the converſe of the Poet's propoſition is alſo true; and that a man runs as great a hazard in marrying a ſilly wife, as a woman in confiding in a fooliſh gallant.

Natural folly, however, is, after all, frequently accompanied with a deal of little artifice and low cunning; productive of a world of miſchief, where it is left to its own guidance.* For the miſchiefs they do in

* Thus, however deficient in point of diſcretion, it is plain Lady Groſvenor wanted not for this little cunning which ſhe herſelf had at the time, ſtill ſo much grace left as to call "*very wicked.*" of this the following paſſage from one of her letters to the Duke is a ſtriking proof. "He "aſked me yeſterday" meaning Lord Groſvenor, "when "I ſhd be able to go into Cheſhire, I told him I co'd not "give the leaſt gueſs as it depended entirely upon how I "was, and I think I'v laid a good ſcheme, for I've al-"readdy complained I've got a pain in my ſide and I "intend to ſay it is much worſe at the end of the month "and that I can't bear the motion of a carriage, it will "I really believe be a very good plan, for if I ſaid I had "a Feaver or any thing of that kind a phyſician wd "know by my pulſe I had not and might diſcover me "to him, and beſides this will be a more laſting com-

the

the female world, perhaps, men of ſenſe may in a great meaſure thank themſelves. In mean compliance with the weakneſs of the

" plaint ſo at the end of Five or Six Weeks, I'll grow " very ill and ſend for Fordyce the Apothecary and make " him ſend me a quantity of naſty draughts which I'll " throw out of the Window only think how wicked I " am for in reality I'm already as ſtrong and as well as " ever I was in my Life.—my month is out by the Week " the 5th of July but by the month not till the 7th ſo I'll " take it at the longeſt and not be well at the end of it, " that we maint lye together and he muſt be going to " New market the 8th or 9th for the Races which are the " Tenth and he'ell ſtay there ſome days and when he " comes home he ſhall find me worſe with the pain in " my ſide, and your Six Weeks will be out the 26th " and I hope you'll not be long after that *I'm quite in " ſperrits with the thoughts that by ſome means or other we " ſhall make out the time* that I ſhall be ſo happy as to " ſee you when you return."

Well might the writer call herſelf wicked; it is indeed as wicked as her preferring a plea of recrimination againſt her lord, after thus projecting by falſe excuſes to keep him from her bed, that ſhe might again become pregnant by her gallant. What ſhameleſs effrontery!—Of the ſame ſpecies of cunning is the Lady's contrivance to be " from the Monday to Saturday in performing her journey from London to Eaton, although ſhe travelled poſt, and changed horſes at every ſtage, whereas ſhe hath gone from London to Eaton in four days with her own horſes, but her ladyſhip gave as a reaſon that ſhe would not hurry, on account of the children."

ſex,

ſex, which God and nature have ſubjected to their authority, they have given thoſe the lead, whom they ought to guide. In conſequence of this, an inundation of levity and impertinence (would to God it were no worſe) hath broke in upon us, from thoſe nations of modern Sybarites the French and Italians: bearing away the reſtraints of modeſty and decency; for which the Engliſh, and particularly the Engliſh ladies, have been for ages remarkable.

The devaſtation is too apparent, but the ruinous conſequences perhaps inevitable. The evils of nature are compenſated by ſome counteracting good; ſimple ineptitude or inſanity may be reſtrained, but artificial folly and the phrenzy of caprice know no bounds.

Nor is this indulgence, ſo fatal to the ſex, however artfully ſolicited, ever ſeriouſly approved by the more ſenſible part even of themſelves. They are the firſt, when its ill effects are experienced, to upbraid a fond

huſband

huſband for his weakneſs, in ſuffering them to run into danger. Like our firſt mother, who ungratefully upbraided Adam, for complying with her preſſing ſolicitations, to be permited to riſk the temptation of the grand deceiver alone, the fallen fair one is ever ready with her reproaches.

Why didſt not thou, the head,
Command me abſolutely not to go,
Going into ſuch danger as thou ſaidſt?
Hadſt thou been firm and fix'd in thy diſſent,
Neither had I trangreſs'd, nor thou with me.

Paradiſe Loſt.

A giddy woman, intoxicated with vanity, would, like Phaæton, aſſume the reins, and attempt to drive the chariot of the ſu[illegible]; though at the hazard of ſetting the world on fire and periſhing in its aſhes.——It is the province, it is the duty, of her huſband to prevent his own diſgrace, by preventing her ruin.

Superficial

Superficial declaimers on the vices and diſſipation of the times, impute their general immorality to a ſpirit of Gallantry in the men, and cenſure incontinence indiſcriminately and equally both in the huſband and wife. Nay ſome of them have been abſurd enough, on the preſent occaſion, to charge Lord Groſvenor with impoliteneſs, in even ſuſpecting a perſonage of his Royal Highneſs's rank and character, of harbouring any ill deſigns againſt his wife. It was the height of rudeneſs, ſay theſe ſilly Sybarites, in a huſband to intercept his wife's letters, and ſet his ſervants rudely to treſpaſs with unhallowed eyes on her ſacred privacy; though at her devotions with a gallant! ſome have even pretended, he ought to have avenged himſelf by the ſword, for the injury done him. But theſe declaimers ſeem to be as ignorant of the laws of England as of thoſe of honour, and even of the cuſtoms of France. A French huſband indeed might have been more polite than to intercept his wife's epiſtolary correſpondence, or interrupt her perſonal interview with her

paramour; but, when ſuch an eclairciſement happens in France, a French huſband knows better than to riſk his life, becauſe an adulteresſ has betrayed his honour.

Incontinence in a huſband, may, as before obſerved, be in ſome caſes, injurious and criminal; it may, when public, be of dangerous conſequence to ſociety; but it is far from being equally ſo in any caſe with incontinence in a wife. The moſt dangerous of all conſequences, however, both to individuals and the community, muſt evidently reſult from the huſband's abſurd reſignation of that power and authority, which the laws both of nature and ſociety, both human and divine, have put into his hands. By the ridiculous example of ſome private families, by the example of a whole neighbouring nation, we may ſee what a chaos of abſurdity would be a world under petticoat government!

We are over-run with vice and licentiouſneſs, not becauſe married men may occaſionally

ſionally indulge themſelves in private acts of gallantry; it is becauſe ſuch men are weak enough to indulge their wives in daily opportunities of being publickly ſolicited by gallants; and of being made the profeſſed objects of their admiration. Would every huſband be ſcrupulouſly cautious of expoſing his wife to the artful ſolicitations of ſingle, or other deſigning, men: would he reſolutely exact of her that attention to the domeſtic concerns of himſelf and family, which he has a right to expect from her matrimonial vow of obedience; both importunities and opportunities would be wanting to effect her ſeduction. Were only our married ladies of reputation to be more rarely ſeen in places of publick reſort; aſſemblies, balls and maſquerades, thoſe ſources of diſſipation and licentiouſneſs, would ſoon be leſs crowded and leſs frequent. Impudent as vice is, and however numerous her votaries, they cannot of themſelves keep each other in countenance. What then is the modeſt and virtuous woman doing, who, by her preſence, en-

courages that in others which ſhe would deteſt in herſelf? And what is that huſband doing, who expoſes the young, beautiful, and amorous, partner of his bed to temptations, he knows by experience he cannot himſelf withſtand?

It is not that theſe reflections do not readily occur to every man of ſenſe; but ſenſe doth not neceſſarily confer ſpirit; and it is in vain to be ſenſible of a rectitude of conduct, if we want the motive to carry it into action.

Faſhion is ſo favourite, ſo powerful, an idol, that few have reſolution enough to refrain from bowing down at the ſhrine of idolatry. It is yet even better to ſacrifice at her altars undiſtinguiſhed among the herd of worſhippers, than, by indulging a private weakneſs, to give ſignal ſanction to ſuch folly in extreme. It is ſtrange to tell, but we have a recent inſtance of a man of rank and abilities; who, after having proſecuted his

wife

wife as an adultereſs, obtained a verdict againſt her gallant, and a divorce *a vinculo* by act of parliament, has been ſo infatuated as to re-marry the ſame woman, and raiſe her again to that bed and board, ſhe had ſo baſely violated, ſo juſtly forfeited.

It may be pretended that every man has a right to conſult his own private happineſs, and to provide for it according to his own ſentiments, however ſingular his taſte, or incompatible his humour with that of the world. But there is one thing every man owes to community, which is a good example; and this it is the more his duty to pay, in proportion as he is conſpicuous either in ſtation or abilities.

But to return to the depoſitions. The verdict of the jury will, it is preſumed, render any farther remarks on the credibility of the evidence in general, as it appeared on the trial, altogether needleſs; I ſhall proceed therefore to make ſome obſervations

on the particular depoſitions of the principal witneſſes; whoſe teſtimony is given in the preſent cauſe, without having before appeared. Of theſe the moſt important, in ſupport of the libel, is the depoſition of the Counteſs Denhoff.

This lady, the widow of a Poliſh nobleman and ſiſter to a right honourable peer now living, was, it ſeems, the confidante of this famous intrigue: in conſequence of which ſhe had repeated opportunities of ſeeing how blindly devoted to their paſſion, and how loſt to all ſenſe of diſcretion and decency, were the two lovers.

It is ſaid, but with what truth I pretend not to know, that the reaſon why this lady did not appear as a witneſs, on the trial at Weſtminſter, was the influence of a promiſed penſion on the Iriſh eſtabliſhment; which, as ſhe was not left by her huſband in the moſt affluent circumſtances, would have poſſibly been very acceptable. The

royal

royal gallant however having forgot his promiſe, the lady appears at liberty to repair in ſome degree her fault reſpecting the Lady, by doing an act of juſtice to her Lord. This witneſs depoſes poſitively that ſhe ſaw the unguarded lovers, three ſeveral times, in the very act of adultery: and though her teſtimony be not the more reſpectable for the countenance ſhe ſeems to have afforded the intrigue, adultery, criminal as it is, is not like murder; in which acceſſories are principals. So that her connivance, though it had been ſtill more open, does not impeach the competency of her evidence; as it would have done, had ſhe been one of the parties immediately concerned.

The depoſition of next conſequence is that of Mrs. Reda, a millener in Pall-mall; who was alſo made a confidante and letter-carrier in this ſhameful buſineſs. Her houſe appears likewiſe to have been a place of rendezvous, as well as that of the counteſs. She does not depoſe indeed that ſhe ever ſaw

the parties in the preciſe act; but if ever circumſtantial evidence be tantamount to a full proof, as Mr. Dunning ſuppoſes; it moſt certainly is tantamount in the depoſition of Mrs. Reda.

The naturaliſts indeed may be apt to think her teſtimony in one particular a little ſuſpicious; as it ſeems to controvert the eſtabliſhed maxim of the ſchools *poſt coitum omne animal eſt triſte*, I mean the circumſtance of the riſibility of the lady in the critical moment and the *ex-poſt-facto* merriment of the Prince:* but if the judicious phiſiologiſt hath an eye to what has been before intimated as to deficiency of intellect, he will not expect from the *luſus naturæ*, that regularity of action obſerved in the more orderly works of creation.

The lawyers will reflect on what I have alſo before intimated that improbable things may be true, while probable ones are falſe. It will

* See printed depoſitions.

elſe

elſe hardly be credited that a prince of the blood ſhould be blubbering on his knees, to ſolicit the good-natured offices of his millener, as this deponent declares.*

What prevented this witneſs from appearing on the former trial, I know not, except ſhe was alſo reſtrained by ſome lure equally tempting with that of an Iriſh penſion.† What merit may not his Royal Highneſs make with the oppreſſed and inſulted kingdom of Ireland, by breaking ſuch promiſes! How piouſly may he not boaſt of having cheated his deluded confidantes of the wages of iniquity! How will not thoſe reverend divines, the court-chaplains, applaud him for having tricked the devil of his due! How may not even he himſelf triumph, in the royal atchievements of having outwitted his emiſ-

* See printed depoſitions.

† What induced her to appear in the preſent cauſe in the Commons, is ſaid to have been a fit of illneſs; which, bringing her to death's door, probably alarmed her fears for retributive juſtice.

ſaries

faries, for confiding in the word and honour of a prince.

If theſe deponents think ſuch hard words too ſevere, let them blame the examiner who drew up their depoſitions; by the terms of which they appear probably more culpable, as aſſiſtants in the intrigue, than they really were. But, be that as it may, their evidence is too connected and circumſtantial to admit of any legal impeachment of its credibility, however blameable a part they may have been induced to perform, as ſcene-ſhifters in the laſcivious tragi-comedy in queſtion.

Mr. Giddings' depoſition preſents itſelf as the next moſt worthy notice. Mr. Giddings is * the Duke of Cumberland's porter, who

* Or rather *was*; this faithful ſervant like other favourites of princes, having retired on a penſion; being diſcharged his maſter's ſervice at the united requeſt and remonſtrance of the whole houſhold; againſt whom his highneſs moſt pathetically complains therefore, that they [his ſervants] will not ſuffer him to have *a friend* about his perſon.

attended

attended, or rather, more properly ſpeaking, accompanied, his Highneſs on his Cheſhire expedition. It was to the adroitneſs of this faithful ſquire and companion in his knight-errantries, that he appears to have been indebted for the nightly opportunities of having an unſuſpected rendezvous with the object of his illicit paſſion, It was owing to the expert manœuvres of Mr. Giddings that, to uſe his Royal Highneſs's own quotation,

So often Henry chang'd his ſly diſguiſe,
Unmark'd by all but beauteous Harriot's eyes,
So oft found means alone to ſee the dame,
And at her feet to breath his amorous flame."

It is yet remarkable that ſo diligent a ſervant, ſo tenacious of the minuteſt concern reſpecting his princely maſter's intrigues, while in agitation, ſhould have ſo treacherous a memory as to forget almoſt every circumſtance relating to them, when called upon to give evidence about them on the trial at Weſtminſter-hall and in the cauſe depending in the Commons.

On

On the trial he could recollect hardly any thing of the matter;* and, when cited to appear in order to give evidence at Doctor's Commons, he ſeemed to have forgot even the citation itſelf, till he was he was reminded of it, by a ſentence of excommunication paſſed on him for contumacy. Nor doth the ſpirit of oblivion forſake him in making his depoſition; for, though evidently privy to the moſt ſuſpicious circumſtances of the intrigue, he does not, on oath, remember that he did "at any "time whatever, ſee or obſerve any kind of "connection whatever between his Highneſs "and the ſaid Lady Groſvenor, as man and "woman; and this deponent hath no reaſon "whatever to believe, that they then, or "at any other time, had ſuch connection."

A witneſs whoſe reminiſcent faculties appear to be ſo highly impaired, may be thought

* And yet the judge on that trial ſeemed to think he ought to have recollected leſs; by juſtifying his want of recollection in ſome points, and ſaying he *ſpoke out* to more *material* ones, which he did recollect.

See printed trial, fol. page 34.

by

by the civilians to be as incompetent as one who is inept, infane, or has not yet arrived at years of diſcretion.

The evidence of Mrs. Birch, Lady Groſvenor's woman, is leſs exceptionable than that of the preceding: as it does not appear that ſhe was in any meaſure concerned in the intrigue or privy to the meeting of the lovers; nay much in her favour, it appears to the contrary: at leaſt it is plain that the Lady thought ſo ill, or rather ſo well, of this her waiting-maid as not to put her to the trial.* And yet this

* To this purpoſe this deponent declares "the next "morning after Lady Groſvenor had informed her that "Lord Groſvenor had taken ſome letters from her, which "ſhe would not have him ſee for the whole world, ſhe "the ſaid Lady Groſvenor in converſation with this de-"ponent upon what had paſſed on that occaſion, ſaid, "that if ſhe had been a ſervant, ſhe could have been truſt-"ed to have conveyed a note, ſhe need not have put herſelf "in other people's power; and added, that ſhe was in many "people's power; that ſhe had often thought of men-"tioning it to this deponent, but that ſhe expected this "deponent would fly, and make a great noiſe and exclaim "againſt it, which would be very diſagreeable to her. "On which this deponent ſaid, that ſhe would have been

witneſs,

witneſs, it ſeems, had been bred up in the family of the Lady's own father; whence ſhe was taken, on her Ladyſhip's marriage with Lord Groſvenor, and preferred to the ſtation of her own maid. So that ſhe might be very naturally ſuppoſed to have a partiality for her Lady; which might have qualified her for a confidante on this occaſion, had ſhe not been of a different diſpoſition and character.

The credibility of this witneſs therefore appears to be particularly unexceptionable. Her evidence, it is true, is merely circumſtantial; ſhe was not privy, as I before ob-

"very ſorry to have diſobliged her Ladyſhip, and that ſhe "did not know well how to refuſe carrying a note, if her "Ladyſhip directed her; but that if ſuch note was in "her opinion improperly directed, that ſhe ſhould have "refuſed carrying it though ſhe had been turned out of "doors for refuſing; and ſhe the ſaid Lady Groſvenor "ſaid, ſhe expected as much, and was therefore forced "to put herſelf in other people's power; and added, that "when a woman is determined to proceed in that way, "it is not in a ſervant's power to prevent it; and this "deponent replied, ſhe believed not; but that if ſhe "could not prevent, ſhe would not encourage it; for "that ſhe believed the eaſier thoſe things were done, "the more it encouraged ſuch proceedings."

ſerved,

ſerved, to the intrigue, and therefore had not the opportunites afforded either the Counteſs Denhoff or Mrs. Reda.

Among other circumſtances of leſs moment in her depoſition, we have a farther proof of the artifice of Lady Groſvenor, and that her talents, however confined, were not ill adapted for intrigue. This appears in the inſtructions given her maid at St. Albans, on her route to Cheſhire. This deponent ſaith, "That when the ſaid Lady Groſvenor uſed "to travel without my Lord, ſhe, this depo-"nent, uſed ſometimes to lie in the ſame room "with her Ladyſhip, or as near her Ladyſhip's "room as ſhe could, and the deponent uſed "to put her to bed, the ſaid Lady Groſvenor "ſaying, that ſhe was afraid of thieves at pub-"lick inns; but ſhe, the ſaid Lady Groſvenor, "contrary to her uſual cuſtom, told this de-"ponent, that ſhe [the maid] muſt lie in the "nurſery with the children, and go to bed as "ſoon as ſhe could, that the nurſery might be "kept quiet, and that ſuch was to be the de-

"ponent's

" ponent's rule on her ſaid journey to Che-
" ſhire."

From another part of this witneſs's depoſition, we learn alſo that the artful excuſes before-mentioned of Lady Groſvenor, to keep her Lord from her bed, were unneceſſary; as his Lordſhip, convinced of her infidelity by the letters he had taken from her, appears determined from that time to have no farther connection with her perſon. This deponent further ſaith " That Lord and Lady Groſve-
" nor continued for ſeveral years to live and
" cohabit together as man and wife, at bed
" and board and ſo continued till in or about
" the month of June laſt paſt, ſince which
" time this deponent conſtantly attended the
" ſaid Lady Groſvenor when ſhe went to
" bed of a night, and aroſe in the morning,
" till ſhe the ſaid Lady Groſvenor left his
" Lordſhip's family; and he the ſaid Lord
" Groſvenor hath never ſince the ſaid month
" of June, to this deponent's knowledge or
" belief,

"belief, lain in the ſame bed with the ſaid "Lady Groſvenor."

The next depoſition, of moment, that preſents itſelf to our notice, is that of Miſs Caroline Vernon ſiſter to Lady Groſvenor. This pretty little maid of honour ſeems to be a promiſing genius and appears to tell a fib with as good a grace as could the moſt unlucky page, that was ever employed about a court. Arch, artful and inſinuating, ſhe ſeems to have been inſpired with the very ſoul of amorous intrigue; at the ſame time her ſtruggle with Lord Groſvenor for the parcel of letters of his Royal Highneſs, which his Lordſhip took from his wife, ſhewed her to be equally poſſeſſed of the pertinacity and intrepidity of the vixen, which is ſo neceſſary to finiſh the accompliſhed confidante of ſuch amours. Out upon ſuch ſeeming! How innocence is injured by appearances! This honourable and harmleſs ſpinſter depoſes that "ſhe did not know and had no ſuſpicion that "ſuch parcel contained a note or letter from

"the Duke of Cumberland, but patterns, "as the ſaid Lady Groſvenor mentioned; "and ſuch parcel did contain ſome trimmings "for a ſack." How ingenious the device to line the trimmings of a ſack with love-letters! and how impertinent was it not in a huſband to trouble his head about the flounces of his wife's petticoat!

It is by ſuch impertinence and intruſion that the actions of ſuch artleſs innocents as the deponent are ſo often miſconſtrued, and imputed to artifice and deſign. The motive for Miſs Caroline's accompanying her ſiſter, in the gardens at Groſvenor-Square, at Kenſington-palace, and in her journey to St. Albans was evidently nothing more than mere curioſity; a paſſion it is true, not more fatal than natural. It was curioſity that ſeduced the firſt woman, the mother of mankind, our great grandmother Eve: What wonder then, it ſhould ſtill continue to beguile her little granddaughters! Hear what the deponent herſelf avers. "That on or about the twenty-third "day

"day of October laſt, ſhe this deponent went "with her ſiſter Lady Groſvenor, party "in this cauſe, and her family, to St. Albans "in the county of Hertford, with the privity "of the ſaid Lord Groſvenor, who wanted "this deponent to go with her the ſaid Lady "Groſvenor into Cheſhire; and the ſaid Lady "informed this deponent, that his ſaid Royal "Highneſs the Duke of Cumberland intended "being there: And this deponent told the "ſaid Lady Groſvenor, that it was a dan-"gerous ſcheme; that if his Highneſs was "there, he might be *ſeen*, and it might occa-"ſion *ſome talk*; and this deponent, who at "firſt had told the ſaid Lady Groſvenor, that "it was a *mad* ſcheme for her, the deponent, "to go with her to St. Albans, was then "more ready to go; although ſhe had no "ſuſpicion of any *improper connection* between "the Duke and her ſiſter; that ſhe might "have an opportunity of knowing what paſ-"ſed on the occaſion." This and nothing more! *to have an opportunity only of knowing what paſſed on the occaſion!* a piece of female

curioſity ſo very natural, eſpecially to woman in a ſtate of virginity, will doubtleſs be regarded by ſome as excuſable, though not altogether laudable! Miſs Caroline told her ſiſter, to be ſure, that 'twas "a dangerous ſcheme," and "a mad ſcheme:" but what then? "ſhe had no ſuſpicion of any *improper con-*"*nection* between the Duke and her ſiſter." At the worſt, we ſee, it was only an error in judgment; the young lady was rather an incompetent judge of *propriety* in regard to perſonal connections, a common defect in the young and unexperienced!

There is a little inconſiſtency, it muſt be owned, in this young lady's depoſition, if we impute her going to St. Albans, merely on the innocent, though dangerous, motive of *curioſity*. For, if ſhe went down deſignedly to have an opportunity of knowing what paſſed on the occaſion, it is ſtrange ſhe ſhould take ſo much pains, as ſhe ſays ſhe did, to defeat her own purpoſe. She depoſes "that "in the evening when his Royal Highneſs the

"Duke

" Duke of Cumberland came to the White-
" hart-inn at St. Albans, and ſupped with
" Lady Groſvenor and her this deponent;
" to the beſt of her recollection, the ſaid Lady
" Groſvenor wanted to have the adjoining
" bed-chamber for her children, which the
" ſervant of the inn, as this deponent now
" beſt remembers, ſaid was taken by a gentle-
" man; and this deponent thinks the ſaid
" Lady Groſvenor aſked the Duke of Cum-
" berland if he had taken ſuch bed-chamber?
" And the Duke made anſwer that he had; and
" this deponent ſaith, that when the ſaid
" Lady Groſvenor and her this deponent
" went into the bed-chamber where they
" were to lie together, ſhe this deponent bolted,
" locked, or otherwiſe faſtened * the door
" of the room where the Duke of Cumber-
" land was to lie; and his ſaid Royal High-
" neſs the Duke of Cumberland did not, to
" her this *deponent's knowledge*, come into

* By this expreſſion, it is pretty apparent the *faſtening* was not very particularly attended to: nor does it ſeem to have been neceſſary.

"the bed-chamber where the ſaid Lady Groſ-
"venor and this deponent were; nor did ſhe
"the ſaid Lady Groſvenor leave the bed, or
"bed-chamber, in which ſhe was in with
"this deponent, *to her knowledge*."

From this part of the depoſition, I ſay, it ſeems a little ſtrange that a young lady, whoſe curioſity led her to accompany her ſiſter on ſo dangerous and mad a ſcheme, only with a view to know what paſſed on the occaſion, ſhould after all, fall aſleep and know nothing of the matter! But, the ſituation of the two ſiſters, having in charge a prince of the blood, whom they locked, bolted, or *otherwiſe faſtened*, into a bed-chamber within their own, ſufficiently explains itſelf, with regard to the object of Miſs Caroline's curioſity. Her depoſition, alſo, ſerves not only to confirm the teſtimony of Hannah Birch, reſpecting her lying at a diſtance from her Lady, contrary to her uſual cuſtom at inns, during the whole Cheſhire journey; but accounts, in ſome meaſure, for the young lady's expedition to

St.

St. Albans. It afforded a ſpecious pretext for keeping the maid at a diſtance, without exciting her curioſity or giving her any cauſe of ſuſpicion: for Miſs Caroline ſays that "Lady "Groſvenor, as this deponent believes, on "account of her this deponent being with her, "and being to lie with her, directed the arti-"culate Hannah Birch, who at other times "ſhe believes, uſed to lie in a room near to "the ſaid Lady Groſvenor, to lie in the "nurſery with the children, and go to bed "ſoon, that the nurſery might be quiet, and "the children not diſturbed."

This manœuvre is exactly of a piece with that little artifice and low cunning which, as hath already been obſerved, diſtinguiſh the conduct of the whole intrigue.

We ſhall paſs over the depoſitions of the two Stephens, of the ſervants and the ſeveral other witneſſes, tending to prove the Duke's accompanying Lady Groſvenor in her journey into Cheſhire, and his being detected in her

bed-chamber on her return at St. Albans. They appear to have had their weight in Weſtminſter-hall, and will no doubt have equal attention paid them at Doctors-Commons.

Before we proceed alſo to conſider the depoſitions, in ſupport of the Lady's allegation, it may not be improper to make a remark or two on the nature and terms of the allegation itſelf. It may appear ridiculous to practitioners, who are accuſtomed to the nothingneſs of forms, which yet they hold eſſential to their practice, to examine minutely into the propriety of what has been ſo long a matter of courſe as to paſs for unexceptionable. I muſt obſerve however on this occaſion that the very terms of the allegation, on which the charge of recrimination againſt Lord Groſvenor is founded, are vague, inſufficient and defective; by no means advancing, or tending to advance, an adequate compenſation for the crime alledged againſt the Lady.

The

The reader perhaps will not be incurious to ſee the form and ſubſtance of this charge: it begins thus: ſetting forth,

Firſt, That the right honourable Henrietta Lady Groſvenor, party in this cauſe, was and is, a perſon of a ſober, chaſte and virtuous life and converſation, and one who would not violate her marriage vow, and always behaved well and virtuouſly towards the right honourable Richard Lord Groſvenor her huſband; and for and as ſuch a perſon ſhe, the ſaid Henrietta Lady Groſvenor, was and is commonly accounted, reputed and taken, amongſt her relations, friends, neighbours and acquaintance: and this was and is true, publick and notorious; and the party proponent doth alledge every thing in this article contained jointly and ſeverally.

Secondly, Item, Whereas it is in the 5th pretended article of the pretended libel, given in and admited in this cauſe, on behalf of

the

the ſaid Richard Lord Groſvenor, pleaded and alledged in the words, or to the effect following, to wit, "That the ſaid Richard "Lord Groſvenor from the time of his afore-"ſaid marriage with the ſaid Henrietta, now "Lady Groſvenor always behaved towards "her with true love and affection, and did "all in his power to render her compleatly "happy, and was and is a perſon of ſober, "chaſte and virtuous life and converſation, "and one who would not be guilty of a breach "of his marriage vow; and for and as ſuch a "perſon he the ſaid Richard Lord Groſvenor "was and is generally accounted, reputed "and eſteemed to be, by and amongſt his "neighbours, friends and acquaintance and "others." Now, the party proponent doth alledge that it is therein falſely and untruly alledged; for that the truth was and is, that the ſaid Richard Lord Groſvenor, ſoon after his marriage with the ſaid Henrietta Lady Groſvenor his wife behaved to her not with true love and affection; but on the contrary, with great neglect, indifference and diſaffec-

tion;

tion; and that he held a criminal correſpondence and adulterous intercourſe with divers ſtrange women, then unknown to the party proponent, from whom his affections were thereby alienated, and that he the ſaid Lord Groſvenor from ſoon after the time of his marriage with the party proponent, hath led, and doth continue to lead, a vicious, lewd and debauched life and converſation, by viſiting, correſponding with and carnally knowing divers ſtrange women of looſe character, and proſtitutes at lodging houſes, and at publick places of reſort, and other places, at which perſons of both ſexes are received and entertained together at unſeaſonable and all hours, and at houſes of ill fame and reputation: that divers women have then and there been procured for, and introduced to him and converſed with him, and that he then and there had the carnal uſe and knowledge of their bodies, and commited the foul crime of adultery; and that the ſaid Richard Lord Groſvenor is a perſon of a very vicious, lewd and debauched life, character, converſation

and

and behaviour, and one who hath frequently ſince his marriage with the ſaid Henrietta Lady Groſvenor, been guilty of breaking his marriage vow; and who doth at this time live, viſit, frequent, correſpond and uſe familiarity in a criminal manner with one or more lewd woman or women, in open breach of the ſame; and he the ſaid Richard Lord Groſvenor was and is generally accounted, reputed and taken to be as aforeſaid amongſt his neighbours, friends, acquaintance and others; and this was and is true publick and notorious and the party proponent doth alledge and propound as before.

The proponent then proceeds to confirm her general charge, by deſcending to the particulars ſet forth in the depoſitions. But let us be permited to aſk here, of what does this charge againſt his Lordſhip conſiſt? Of having behaved, in general terms, indifferently and neglectfully to his wife, and having converſed, unknown to her Ladyſhip, with

with looſe women, at houſes of ill fame!* This is the whole charge. It is indeed inſinuated that his Lordſhip has by ſo doing commited *adultery*, and been guilty of a breach of his *matrimonial vow*: but I have made it abundantly clear, as well from the ſcriptures, as from law and reaſon, that, were his Lordſhip even guilty of the facts laid in this charge, he has been neither guilty of adultery, nor of any breach of his matrimonial vow; any farther indeed, with reſpect to the latter, than the indifference and neglect charged upon him, may amount to ſuch a breach, according to the terms of the matrimonial covenant.

But admiting that ſuch neglect did amount to ſuch a breach; although the frequency of her Ladyſhip's pregnancy ſince her marriage ſeems to argue ſtrongly againſt the fact; yet,

* Certainly alſo unknown to her Ladyſhip. It is not even pretended that his Lordſhip met his miſtreſſes where my Lady met her royal gallant, in the gardens of Groſvenor Square!

grant-

granting, I ſay, her ladyſhip the beſt judge, was ſhe without remedy, that ſhe ſhould take ſuch infamous revenge both on her Lord and herſelf? The courts-chriſtian would, on proper application, have enforced his Lordſhip to due performance of conjugal rites. Nay, had he been not only neglectful but even cruel and unkind, ſhe would have found honourable relief in the ſpiritual court; where ſhe would have appeared with a much better grace to pray a divorce *propter ſævitiam*, than, ſhe does at preſent, in the groſs and ſcandalous way of recrimination for adultery.

The depoſitions, which ſupport this notable allegation are equally curious with the allegation itſelf. On theſe the firſt obſervation, that ſuggeſts itſelf, is that, granting the plea of recrimination a good one, though it has been fully ſhewn it is not: the moſt material witneſſes in ſupport of it, are ſuch as depoſe, at the ſame time, to their own turpitude and infamy. Theſe are Roberts, Elmes, and Tipping, with their reſpective *aliaſes*.

It

It has been already obſerved that Lord Chief Juſtice Coke was of opinion, and Lord Raymond declared from the bench, that ſuch witneſſes were incompetent. To their authorities I ſhall here add that of Sir Francis Pemberton, Lord Chief Juſtice of the court of King's-bench, in the time of Charles the ſecond. It was, on the trial of Lord Grey and others, for debauching Henrietta, daughter of the Earl of Berkely, that he delivered his ſentiments to the lady herſelf in the following terms. "Madam, you have injured, your own reputation, and proſtrated both your body and your honour, and are NOT *to be* BELIEVED."*

If a judge could ſay this to the daughter of an earl, who had been deluded from a fa-

* It is not immediately to the preſent point; but I cannot help remarking that this learned and accurate judge, in ſumming up the evidence on that trial, (though it be of a brother-in-law inceſtuouſly debauching his wife's ſiſter) does not ſay that the defendant lived in *adultery*, but in *fornication*, with her. The reader will apply this remark in its proper place to our preceding arguments.

ther,

ther, anxious to receive her back again with all her faults, though to his own ſhame; what might we not expect, from a judge of equal integrity, to be ſaid to ſhameleſs proſtitutes picked up, by dirty attorneys, out of jails and ſtews, the very ſink of debauchery, and tricked up in tawdry rags for the purpoſe, to declare on oath, in the face of a Lord Chief Juſtice of England, their own iniquity and infamy?—And they were heard! —Oh, Shame! where is thy bluſh? Whither hath Aſtræa taken her more than ordinary flight, in an age, which, ſetting its heart on gold, finds it immediately converted into iron? But we live in the epoch of paradox!

It is hoped the reader, will not expect a very minute inveſtigation of the depoſitions of ſuch kind of witneſſes. Were they competent or credible, it is certain that they ſpeak plain enough to the point, in the way of convicting Lord Groſvenor of *fornication*. Two of them indeed, viz. Alice Tipping, otherwiſe Charlotte Gwynne, and Elizabeth Elmes

Elmes, otherwiſe Newton, otherwiſe Hornpipe, pretend to be married women; but, as, by their own declaration, they are wives without huſbands, and ſupport themſelves by open proſtitution, it would be in the higheſt degree abſurd to affect to take any advantage of this circumſtance, in relation to the diſtinction before made between fornication and adultery. We ſhall leave the depoſitions of the three female witneſſes abovementioned therefore, without farther comment, to the judgment of the court.

We muſt not paſs ſo ſlightly over the remarkable depoſition of Henry Vernon Eſq; brother to the Lady, and preſent head of the family.

This gentleman depoſes "that he is the natural and lawful brother of the right honourable Henrietta Lady Groſvenor, party in this cauſe: That he doth verily, and in his conſcience, believe, that ſhe, the

"ſaid Henrietta Lady Groſvenor, is a perſon "of a ſober, chaſte, and virtuous life and "converſation, and one who would not "violate her marriage-vow, and always beha-"ved well and virtuouſly towards the Right "Honourable Lord Groſvenor her huſband, "the other party in this cauſe; and for, and "as ſuch perſon, ſhe, the ſaid Henrietta Lady "Groſvenor, was, and is commonly accounted "reputed, and taken amongſt her relations, "friends, neighbours, and acquaintance, as "the deponent doth alſo verily and in his con-"ſcience believe."

If this young ſquire be not a good chriſtian, it is certainly not through his incredulity; for, if we are to regard this declaration as ſincere, he cannot poſſibly have the ſmalleſt ſhare of ſkepticiſm in his nature. But perhaps he had heard that credulity in this caſe, was in vogue at St. James's and that a moſt reſpectable perſonage, induced by the ſimplicity of his own heart to confide in the rectitude of others, profeſſed to believe what none

none but the greateſt man in the kingdom and after him Mr. Henry Vernon, could poſſibly believe.

The deponent proceeds and ſaith "that "between three and four years ago, the time "more particularly he cannot now recollect, "the ſaid Richard Lord Groſvenor told the "deponent and his brother William Vernon, "Eſq; that he was ſhortly to be made a mini- "ſter of ſtate, which information gave the "deponent and his brother much pleaſure "and ſatisfaction and about two or three "three days afterwards, the deponent went "to the houſe of the ſaid Richard Lord Groſ- "venor, in order to congratulate his ſiſter "the ſaid Lady Groſvenor, upon the proſ- "ſpect of his Lordſhip's being made miniſter: "That on going into the room where the "ſaid Lady Groſvenor was, he found her in "tears, and the ſaid Lord Groſvenor was in "the ſame room, cloſe by her; and ſhe, the "ſaid Lady Groſvenor, accuſed the ſaid Lord "Groſvenor of having uſed her extremely ill

" on that and many other occaſions, and ſhe " then went out of the room, and his Lord- " ſhip and the deponent followed her into an " adjoining room, where ſhe ſtill continued " in tears, and again accuſed the ſaid Lord " Groſvenor with having uſed her very " ill."

Before we paſs any comment on the ill-treatment of the Lady, it may not be amiſs to aſk this very brotherly deponent, to what end is the introduction of this idle tale of Lord Groſvenor's being to be appointed ſecretary of ſtate? Is it brought in with a view to throw a caſt of ridicule on his Lordſhip, as too ſanguine in his expectations of court-favour; or too preſumptuous of his talents and qualifications for the diſcharge of ſo important an office? Granting the truth of the ſtory, his Lordſhip is not the firſt young nobleman, who has been cajoled by the fair ſpeeches of the favourite; nor can any reaſon be given why he ſhould not have been animated, as well as another, with the laudable ambition

ambition of diſtinguiſhing himſelf among his equals. And as to abilities, ſurely we have had inſtances of men filling important poſts in the ſtate, both to their own honour and that of their country, whoſe talents for publick buſineſs were little known till they were unexpectedly called forth to action. Is it becauſe an ungrateful woman, to palliate her own infidelity, hath affected to ridicule her huſband's turn of amuſement for the chace and the turf; is it, I ſay, that a taſte for ſuch corporeal exerciſes argues intellectual incapacity? Have we never had miniſters of ſtate of diſtinguiſhed merit in the cabinet, that have been equally diſtinguiſhed for their fondneſs for the recreations of the courſe and the chace? Have not the manly diverſions of the field and the circus been the favorite avocation of heroes, ſtateſmen and legiſlators in all ages?

Where virtue is, theſe are moſt virtuous!

And yet, notwithſtanding this pitiful inſinuation reſpecting his Lordſhip, it ſhould

ſeem, by the pleaſure which Maſter Vernon, and his brother William, (his Royal Highneſs's friend Billy*) took in the information, that they conceived themſelves to be at leaſt qualified for ſome poſt of equal importance.

There is a very ſingular mark of modeſty in the above inſinuation; eſpecially if we reflect that it comes from a devoted admirer of the great abilities of his Royal Highneſs the Duke of Cumberland; who, with juſt the ſagacity to diſtinguiſh between a horſe and a hound, hath it ſeems formed the prudential reſolution of outwitting all the knowing-ones and black-legged gentry of New market!

With reſpect to the tears of the Lady: though we profeſs the utmoſt tenderneſs for the ſex, we cannot but think the tears of a woman, without ſome other corroborating circumſtance, a very problematical evidence of her being ill treated. Many a pang will that man

* See the love letters.

feel

feel at heart, who does not occaſionally cauſe his wife to ſhed a tear. It is not to be doubted but her Ladyſhip ſhed tears of vexation, when Lord Groſvenor took from her the Duke's love-letters. Had this deponent happened to come in at the time, he might have added that circumſtance alſo to the inſtances of his noble brother-in-law's ill uſage of his virtuous ſiſter.

It is ſtrange that this partial young man could not advance a ſingle fact, by which ſuch ill uſage might at leaſt bear an appearance of reality. But no; he depoſes only to the equivocal evidence of his ſiſter's tears, her ſtomachful refuſing to eat her dinner, and her ſaying his Lordſhip uſed her extremely ill; without ſpecifying the ſmalleſt particular in which that ill uſage conſiſted.

Can ſuch evidence as this, counterballance the concurrent teſtimony of the ſervants of the family, joined to the ſolemn oath of the reverend chaplain, in confirmation of the in-

dulgent treatment, ſhe met with at the hands of his Lordſhip? Impoſſible!

The ſimplicity and credulity (I wiſh I could ſay innocence and integrity) of this witneſs appear next, in his declaration, reſpecting his fellow-witneſs, and bed-fellow,* Mrs. Alice Tipping; of whom he affirms on oath, that he "doth not know nor believe, neither *hath he ever heard* that ſhe, "his ſaid fellow witneſs (Alice Tipping, "otherwiſe Charlotte Gwynne) is a common "proſtitute or woman of the town."

* For the world will juſtify me in ſo calling a handſome young female, taken from the public ſtews, to become, on the firſt word of invitation, *houſe-keeper* to a ſingle gentleman of the age of three and twenty. With what face can this Staffordſhire Eſq; thus maintain, on oath, the innocence of a convicted adultereſs, in the perſon of his ſiſter, and labour to convict Lord Groſvenor of fornication, while he himſelf lives in open and avowed adultery, with the wife of another man? For he declares, in his depoſition that he believes his ſaid fellow-witneſs and *houſe-keeper* to be a married woman. What ſcandalous work is all this! Well may Squire Vernon affirm himſelf to be the *natural* brother of her Ladyſhip: it is very plain that his relation is neither *moral* nor *political!*

And yet nothing is more plainly insinuated, in his deposition, than that he well knew her character; and was privy to her having been at Windsor Lodge and Sunning Hill, for some time, with the Duke of Cumberland. After which let any one believe, who can, that he was ignorant, or had never heard, of her connection and residence at Charlotte Hayes's. I say, *Credat Judæus Apella!*

Add to all this, that our deponent, Mr. Henry Vernon, not content with giving his own evidence, bestirred himself in the procuration of others, to support the recrimination of Lady Grosvenor. He declares indeed that he had not "the least concern with Mr. Buxton or any other person," in procuring the evidence of his house-keeper. That he did exert himself, however, to procure other witnesses he confesses; but then these he intimates were such only as he suspected were secreted by Lord Grosvenor. But that this was not altogether the case, appears evidently from an epistle, which our brotherly

deponent

deponent wrote on this occaſion from Staffordſhire to Mrs. Reda; who, as the world knows, being no keeper of ſecrets, the writer will not be ſurprized to find a copy of it here.

Stilton Oct. 19. 1770.

"I take the Liberty Mrs. Redaw (being informed that *Burton* and Windows, the Lawyers employed for my Siſter Lady Groſvenor, have uſed you very unfriendly after the Services you have done, and are ſtill willing to do for my Siſter, that all things for the future, ſhall be tranſacted between you and mee, or if neceſſary to imploy any Perſon to *talk* to you, it ſhall be Some other Perſon that my Siſter will employ.

"You may depend upon it Mrs. Redaw, that *any thing you do*, to aſſiſt my Siſter's Cauſe, ſhall be moſt Gratefully remember by *mee*

"I ſhall be in Town in a very Short time, when I will immediately come and talk things over with you.

"I ſhould

"I ſhould be much obliged to you, if you wou'd favor me with a Line to inform me, *what witneſſes* you have *at preſent got*, for her, and *what more* you think you ſhall *be able to get*. my Siſter deſires you will be kind enough to favor me with an Imediate Anſwer; *except* of her thanks, for the Aſſiſtance you are trying to give her and I give you my Word, every thing you do on the Subject, ſhall be moſt gratefully remembered by mee, who ſubſcribe myſelf"

Your moſt obliged
and Sincere Humble Servant
HENRY VERNON.

I leave the reader to make his own comments on the above letter; and can only offer in the writer's exculpation for entering into ſo dirty a piece of buſineſs, the contagion of an example; which he might think ſufficiently exalted to juſtify him. I mean that of his Royal Highneſs the Duke of Cumberland; who, on being firſt informed of Mrs. Bois-germain's ſuppoſed intimacy with Lord

Groſ-

Groſvenor, actually viſited her, in company with his porter Giddings, at her lodgings in Orange-ſtreet, Leiceſter-fields; and, with what view his Highneſs beſt knows, moſt certainly condeſcended to beſtow on her a cordial drop of the blood-royal, inſtead of that common offering made to beauty, ſordid gold. Oh luſt, what a leveller art thou!

It is a matter of no very great conſequence, but I cannot diſmiſs this gentleman's depoſition, without noticing how readily he depoſed to his belief of the ſpiriting away this Mrs. Bois-germain, to prevent her appearing at Doctors-Commons; although it is plain that ſhe did appear and her depoſition was regularly taken.

There is another circumſtance or two advanced in this depoſition, which redound little either to the veracity or generoſity of the deponent. Theſe are the pretended ſordid manner in which our gallant ſquire keeps his punk, and her imparallelled generoſity in leaving

leaving the amuſements of the town and the emoluments of Charlotte Hayes's, to keep his houſe in the country for nothing!

The next thing, that is particularly ſtriking on the face of theſe depoſitions, is the names of the two witneſſes, who appeared in behalf of Lady Groſvenor in Weſtminſter-hall. Theſe are Mrs. Bois-germain and Mrs. Howe, who ſwore to their perſonal intimacy with his Lordſhip, and on whoſe evidence Mr. Wedderburne made the following very pertinent obſervations to the jury. "Here is Mrs. Bois-germain, who is dreſt and brought into court as you have ſeen, and you have heard the evidence ſhe has given; all beſpeak the miſerable ſituation to which the woman is reduced. She has a huſband ill accounted for, and is ſuppoſed, God knows where, to be a captain of a ſhip in the French ſervice now in England, waiting for aſſiſtance, and to beg or into buſineſs. How can aſſiſtance be given in England, to get a captain lately in the French ſervice any preferment here, that aſſiſtance is

to

to come from a brother in Paris. This is the account that is given by a woman, the husband of whom is acquainted with Mr. Giddings. If the husband is of that inability, and her fortune so little as not to afford her that dress, you will judge whence the expence comes; and she says she thinks it the common cause of the sex, in which she has the impudence to come here: and this woman has the impudence to tell Lady Grosvenor, that she has the honour of vindicating her as one of her own sex, by relating her own prostitution. She says she lived in Jermyn-street, had lodgings taken for her by Mrs. Muilman's maid, at a stay-maker's; she lay in within a year after, and laid the child to Lord Grosvenor. But what other witness is called to confirm that testimony? Is the maid called who hired the lodgings? Is Mrs. Muilman called, who says she introduced her to Lord Grosvenor? Are they called? Mrs. Muilman might be compelled to tell, whether she was a bawd or not; the maid might be compelled to tell who she hired that lodging for; the people

of

of the houſe where ſhe lived might have been compelled to have told you they lodged there; the two other women might have been compelled to have told you that they had received a twenty pound note of Lord Groſvenor for the expence of her lying in, and taking care of the child, if it would have borne it; but there is not a tittle of evidence to ſupport a moſt incredible ſtory, introduced by moſt incredible witneſſes. The next witneſs is Mrs. How, who is called to ſhew a different fact, who is one of the dirtieſt of all the women coming from about Long Acre: this woman, whoſe evidence is given very looſely too, was introduced, as ſhe ſays, to ſee Lord Groſvenor once or twice; upon theſe occaſions ſhe ſaw a perſon, as ſhe ſays, and proſtituted herſelf to a perſon that called himſelf Lord Groſvenor; and ſhe met in a place in ſome court about Long Acre at one Mr. Leſlie's. If ſuch evidence is to be admitted to blaſt a man's character, what man is there in this town whoſe character is not in danger; if it was at

the

the mercy of ſuch witneſſes as Mrs. Bois-germain and Mrs. How, who are brought in to prove their having proſtituted themſelves to the plaintiff? There is none of us all, not even the graveſt character; there is not a pious biſhop upon the bench, but may have his character blaſted by the ſame kind of teſtimony, if it obtains any degree of credit. Who can enquire into the various labyrinths of abandoned proſtitutes, from whence they have been produced, and the means by which they have been traced and brought here? Gentlemen, it is of all ſorts the worſt, where the proof is of the moſt ſuſpicious kind of teſtimony, which no plaintiff is prepared for, no perſon can meet ſuch a ſtab in the dark, by the evidence of ſuch witneſſes as theſe. Where is Mrs. Leſlie? The evidence herſelf ſo unfortunate and wretched, does not pretend to give you any account how ſhe knew it to be Lord Groſvenor particularly: Mrs. Leſlie might have been called here to have told you, (who is ſuppoſed to have introduced him) that ſhe knew

knew Lord Groſvenor, and that Lord Groſvenor was introduced to this woman."*

Now, among the depoſitions before us, we have thoſe not only of Mrs. Bois-germain and Howe, but alſo thoſe of Mrs. Muilman and this Leſlie, now Elliſon.

The two former, taking advantage of the law, decline to repeat, at Doctors-Commons what they ſwore at Weſtminſter, while the two latter depoſe point-blank to the falſehood of what the former ſwore on the trial; in ſo much at leaſt as it reſpected themſelves.

Mrs. Muilman in particular depoſes that, ſo far from ever having introduced Mrs. Bois-germain otherwiſe King to Lord Groſvenor, ſhe does not know her, nor has ever *ſeen her*. She ſaith "That ſhe hath heard of the articulate Abigail Mary, wife of one Bois-germain, and who ſometimes went by the name of King, but doth not know her, nor did ſhe ever ſee her; neither was ſhe, the ſaid

* See the printed trial.

Abigail Mary, now wife of Mr. Bois-germain, ever, through the deponent's means or procurement, nor to her knowledge, introduced to the acquaintance of Lord Grosvenor."

Mrs. Ellison, the quondam Leslie, deposes respecting Howe. "That the articulate Mary Howe did, in or about the month of May 1768, live with the deponent as a servant, in Glassonbury-court, Long-acre; but she, the deponent, did not at any time introduce the said Mary Howe to the said Richard Lord Grosvenor, as a girl lately come out of the country, or in any other manner; nor was the said Richard Lord Grosvenor ever at the deponent's said house in Glassonbury-court; nor did the said Richard Lord Grosvenor and Mary Howe ever lie together at her said house, or any other place, to the deponent's knowledge; nor did the said Lord Grosvenor ever give the deponent five guineas, or any other sum of money, for procuring the said Mary Howe or any other woman; nor does the deponent know any thing further of the several particulars in the said article mentioned."

In

It is farther obſervable in the depoſition of this witneſs, that, in anſwer to the interrogatories, adminiſtered on the part of Lord Groſvenor, ſhe depoſes " That ſhe has received ſeveral ſums of money, to the amount in all of about fifteen guineas, by the hand of one Mr. Gibbons, who received the ſame from Mr. Yoxall, one of the agents for the producent: That ſhe has alſo received parcels of cloaths from the producent's agents, or by their direction, to the amount of about fifteen guineas more; and hath alſo been maintained or ſupported by the producent or her agents, from about the beginning of December laſt, till within this fortnight or three weeks paſt, in order to induce her to be examined as a witneſs in this cauſe: That the interrogate Mr. Buxton has, as the reſpondent has been informed, and believes, employed the ſaid Mr. Gibbons, and alſo one Mr. Wallace and his wife, to go about into bawdy-houſes and other places, to ſearch and procure witneſſes at any rate to be examined in this cauſe, on the part of the producent, and furniſhed them

with money, as they informed the reſpondent; and which information ſhe believes to be true; and particularly, they, the ſaid Mr. and Mrs. Wallace, informed the reſpondent, that they had one of them received two guineas, and the other ſeven and twenty ſhillings on that account; and the ſaid Mr. Gibbons was, as he informed the reſpondent, kept in weekly pay; — and they were authorized to offer or promiſe any perſon they could find, That if he or ſhe would attend to be examined on the part of the producent, that they ſhould be handſomely rewarded for ſo doing; and they accordingly applied to ſeveral perſons, and particularly to a fiſh-monger's wife in one of the markets of London or Weſtminiſter, but which ſhe does not recollect, and alſo to a woman belonging to one of the theatres, as they informed the reſpondent. And the reſpondent, upon her oath, further anſwers that the interrogate Mr. Buxton promiſed her, the reſpondent, that if ſhe would attend to be examined in this cauſe on the behalf of the producent, that ſhe ſhould be handſomely rewarded for ſo doing,

and

and much beyond her expectations; or he uſed words to that effect." *

We find it here ſtrongly inſinuated, that the female witneſſes, brought to ſupport the plea of recrimination, have been procured, for that purpoſe, by means very diſhonourable to the cauſe; and little, if any thing, ſhort of ſubornation. It is as ſtrongly inſinuated in other depoſitions that ſome of them have been taken out of jail, and, as others were, on the trial, clothed and rewarded by the ſolicitors or their client. How far this be true will probably ſometime or other more fully appear; in the mean while it is reaſonable enough in thoſe, who are ignorant of the ſtrange inconſiſtency of our law-practice, to doubt the veracity of ſuch inſinuations; as they will naturally think ſuch illicit methods of obtaining

* Theſe manœuvres, reſpecting the procuration of witneſſes by the Lady's agents, is farther confirmed by the depoſition of Mr. Vernon, to ſay nothing of the infamous evidence of Roberts, Elmes and Tipping.

evidence too dangerous both to the principals and accomplices to have been ſo openly purſued, as pretended.

So detached and independent however, is the ſpiritual court, reſpecting the ſtatute and common laws of this country, that neither the accomplice nor principal, were the one even guilty of perjury and the other of ſubornation, would run any great riſk of puniſhment for their crimes; at the worſt they would riſk no other than what the court-chriſtian itſelf might inflict *pro ſalute animæ*.

Heinous as are the crimes of perjury and ſubornation, they are not proſecutable by the ſtatute law, if commited only in the eccleſiaſtical courts; which is expreſſly excepted in the act of the 5th of Elizabeth. And though both were puniſhable at common-law before that ſtatute exiſted, yet, as ſuch ſtatute was reſtrictive with regard to the puniſhment, enacting that it ſhould not be leſs at common law than is inflicted by ſtatute, the ſaving

clauſe

clauſe, regarding the eccleſiaſtical courts, appears hence to be equally reſtrictive reſpecting the crime: ſo that perjury and ſubornation of perjury in any cauſe inſtituted in the eccleſiaſtical court, ſeems to be puniſhable only by that court.

Hawkins ſays, it has been ſettled that perjury at common-law is not indictable before the juſtices at quarter-ſeſſions.†

In the reports are alſo mentioned two * caſes, ſo late as the 8th and 11th of George the ſecond; in which indictments at the quarter-ſeſſions for perjury at common-law, were quaſhed for want of juriſdiction.

Even in the ſuperior courts it has been made a queſtion, particularly by Lord Chief Juſtice Holt, whether perjury in the eccleſi-

† 2 Haw. 40.

* The King and *Weſtineſs*—and the King and *Bainton*. Str. 1088.

aſtical court can be tried in the temporal; and it is ſaid to be not yet ſettled; though it is confeſſed that, in all caſes where it hath been tried, the perſons have been acquited, and ſo it has been left. Lord Raym. 451.

If to the reflection, of this being the real ſtate of the caſe, we add another, reſpecting the more than ordinary deference at preſent paid to the ſpiritual by our temporal courts;* we ſhall have no cauſe to wonder if perjury and ſubornation of perjury be little regarded in cauſes depending in Doctors-Commons.

It is indeed a very ſerious and important object of conſideration, which cannot fail to affect every thinking man of whatever rank, that the concurrence of juriſdiction, with which Dr. Burn is pleaſed to congratulate the preſent age, is in this particular far from having any real exiſtence. It has

* Of which a very ſtriking inſtance hath been already given, in our ſtrictures on the late charge to the jury in Weſtminſter-hall.

been

been repeatedly avowed that the eccleſiaſtical law is, or ought to be, ſubſervient to the common and ſtatute law. It has been repeatedly enacted, by the legiſlature, that no *canon* ſhall be allowed that is *any way repugnant* to the ſtatutes. Yet where is even the practitioner, however fortified by repeated precedents in the common routine of his buſineſs, who will yet preſume to maintain the practice, we are exploding, to be in *no way repugnant* to the ſtatutes?

It is indeed not only repugnant to the ſtatute and common law of England, but to common juſtice, to common humanity! It is hardly credible that, in a civilized country, where polygamy is prohibited, a ſimple man or woman, ſhould be liable to be deluded into a marriage publickly ſolemnized, which may be afterwards declared null and void and the iſſue of ſuch a marriage baſtardized; while the deluder is expreſſly exempted by ſtatute from the penalties of polygamy. But ſuch is the abſurdity, ſuch the cruelty, which

ariſes

ariſes from the claſhing and contrariant juriſdictions, in the adminiſtration of the laws of England!

It is enjoined, indeed, by Can. 107, that "in all ſentences pronounced only for divorce "and ſeparation *a thoro et menſa*, there ſhall "be a caution and reſtraint, inſerted in the "act, of the ſaid ſentence, that the parties "ſo ſeparated ſhall live chaſtly and conti-"nently; neither ſhall they, during each "others life, contract matrimony with any "other perſon; and for the better obſerva-"tion of the laſt clauſe, the ſaid ſentence "of divorce ſhall not be pronounced, until "the party or parties requiring the ſame, "have given good and ſufficient caution and "ſecurity into the court, that they will not "any way break or tranſgreſs the ſaid re-"ſtraint or prohibition." But what an abſurd and ridiculous reſtraint is this? It is as incompatible with the dictates of religion as thoſe of common ſenſe. Our Saviour appears to have thought a life of celibacy unnatural and im-

impracticable in perſons that had been once married, by his declaring that the huſband who puts away his wife except for fornication cauſes her to commit adultery. It is juſt as inconſiſtent with reaſon to ſuppoſe that perſons, who could not live continently together, ſhould live chaſtly and continently, when ſeparated.

Sir Charles Wolſeley, in his celebrated tract on divorce, written near a century ago, has ſome very pertinent remarks on this head. "Let us ſuppoſe, ſays he, that a woman ſhould, without juſt cauſe, refuſe due benevolence to her huſband; ſhe would in ſo doing be guilty of a notorious ſin; and it is ſurely not fit that both huſband and wife ſhould be expreſſly enjoined to do that, which is a ſin in either to do voluntarily. Yet this is the caſe in the divorce *a menſa et thoro*."

I know it is pretended, that this kind of divorce is allowed, by way of leaving room for a reconciliation between the parties; as

if

if ſuch reconciliation were more conformable to the divine law, and the ends for which marriage were inſtituted, than a total and abſolute divorce. But this is contrary, as hath been already obſerved, to the true and genuine doctrines of Chriſtianity; which do not admit of the reconcilement of the huſband with a wife ſeparated from him for adultery. St. Ambroſe and St. Jerome both declare againſt it: the latter expreſſly ſaying that, an adultereſs neither can nor ought to be retained by her huſband, *adulteram nec poſſe nec debere retineri.* Nay, he goes farther, and ſaith, that not only *ubicunque eſt fornicatio*, where there is fornication, but *fornicationis ſuſpicio*, the ſuſpicion of it, *uxor dimittitur*, the wife is to be diſmiſſed. Indeed the adoption of this opinion under the goſpel diſpenſation, appears a very logical reſult of a ſimilar inference, deducible from the diſpenſation of the law. "When a man hath taken a "wife and married her, and it comes to paſs "that ſhe find no favour in his eyes, then "let him write her a bill of divorcement,

"and

" and give it in her hand, and ſend her
" out of his houſe. And when ſhe is de-
" parted out of his houſe, ſhe may go and be
" another man's wife. And if the latter huſ-
" band hate her, and write her a bill of di-
" vorcement, and give it in her hand, and
" ſend her out of his houſe; or if the lat-
" ter huſband die, which took her to be
" his wife; her former huſband, which ſent
" her away, may not take her again to be
" his wife; for that is an abomination be-
" fore the Lord." Deut. chap. xxiv. ver.
1. 2. 3.

Now, if reconciliation was thus forbidden with a woman, who was divorced for no crime, but becauſe ſhe happened to prove diſagreeable to her huſband, and who was permited to marry another man; *a fortiori*, it muſt be ſurely forbidden with a woman who is divorced for the crime of adultery! ſurely the pollution of a ſecond lawful marriage could not be ſo great, as her criminal intercourſe with an adulterer!

Hence

Hence we ſee that a partial divorce, enjoining continence to the parties, carries an abſurdity on the very face of it. "Amongſt the Jews," ſays Sir Charles Wolſeley, "never any divorce was heard of without liberty to remarry, and it was only intended for that purpoſe. Calvin, upon that paſſage (he who marries her who is put away, commits adultery) ſpeaks fully; this ſentence, ſays he, has been moſt corruptly expounded by many interpreters, for they thought generally and confuſedly, that it was commanded to live ſole after divorcement: ſo, if the huſband ſhould put away the adultereſs, of neceſſity they both ſhould live unmarried, as if this were the liberty of divorcement, only to lie away from the wife; as if alſo Chriſt did not evidently, in this caſe, permit that to be done, which the Jews were wont generally to uſurp unto themſelves according to their own pleaſure? therefore their error was too groſs; for when Chriſt condemneth him for adultery who marries her who is put away, it is certain

certain that this is to be underſtood of unlawful and frivolous divorcements.

By the Roman laws all divorces admited of a ſecond marriage: in the chriſtian church, in the beginning, it was ſo. Nor indeed was divorce ever thought of any where but in order to a ſecond marriage, till this contrivement of a divorce *a menſa et thoro* came in; the effect of which, in the Romiſh church, where it has been chiefly practiſed, has been ſuch as does no way credit it. Cajetan, one of their own caſuiſts, is ſo ingenuous, that, upon the xixth of *Matt.* he ſaith, *Intelligo igitur ex hac domini Jeſu Chriſti lege, licitum eſſe chriſtiano dimittere uxorem ob fornicationem carnalem ipſius uxoris, et poſſe aliam ducere.** And a little after he adds, *Non ſolum miror, ſed ſtupeo, quod Chriſto clare excipiente cauſam fornicationis, torrens doctorum non admittat illam mariti liberta-*

* I underſtand therefore, from this law of Chriſt, that it is lawful for a chriſtian huſband to put away his wife for fornication.

tem.

*tem.** Wherever that kind of divorce has been practiſed, the conſequence hath moſt commonly been, that the innocent party hh by temptation fallen into ſin, the offending party into farther trangreſſion; for it is not a thing probable or likely, that ſuch who would not live chaſtely in a married condition, ſhould do ſo in a ſingle condition: and at laſt greater inconveniences and animoſities have ariſen from ſuch a ſeparation, and the parties very rarely, if ever, been again united. It enſlaves mankind in a very ſad dilemma, either to lie in a polluted bed, and yield to an impudent adultreſs (for ſo they uſually grow at laſt) or elſe to undergo all thoſe temptations men are ſubject to, without a wife, in a ſingle and unmarried condition: God no where ſeems to have given the woman ſuch an advantage over the maſculine ſex, as to be able to entrap the man in ſuch a ſnare."

* I not only think it ſtrange but am aſtoniſhed that, ſeeing Chriſt has ſo expreſsly excepted the cauſe of fornication, the herd of doctors do not allow a liberty of divorce in that caſe to the huſband.

Again

Again the ſame writer, ſpeaking of partial divorces, ſays " the divorce *a menſa et* " *thoro* ſeems to be a fiction in the canon " law, and ſo have no ground, neither in " any law of God, nor in reaſon.

" Not in any LAW OF GOD, for where- " ſoever divorce was allowed by any divine " law, it was a total divorce, and the per- " ſons were allowed to marry again; it was " ſo among the *Jews*; whoever was then " divorced, might go to a ſecond marriage: " it is ſo in what our Saviour ſays; he evi- " dently implies it (putting away and re- " marrying are conjoined) *Whoever*, ſays he, " *puts away his wife, and marries another,* " *except for the cauſe of fornication*, &c. " where the implication is evident, that, in " the caſe of fornication, he may both put " away his wife, and alſo lawfully marry " another; the firſt marriage being diſſolved: " the word απολυσαι, conſtantly uſed by our " Saviour, in the *New Teſtament*, for divorce, " and putting away, implies, a nulling of the

" marriage, and diſcharge of the obligation,
" and ſignifies to abſolve, looſe, releaſe, diſ-
" charge; ſo that if what our Saviour hath
" ſaid about this divorce, in caſe of forni-
" cation, be a rule to the church now, it is
" plain, the divorce allowed, by him, in
" that caſe, admits of a ſecond marriage. If
" it be not a rule to the church, then there
" is not the leaſt poſitive allowance under
" the goſpel for any divorce at all, and if ſo,
" all divorces *a menſa et thoro*, are without
" any divine warrant.

" Not in REASON, for whatſoever can be
" a ſufficient divorce from all the ends of mar-
" riage, muſt needs be ſufficient to juſtify a
" divorce from the obligation of marriage;
" the one being but in order to the other:
" it ſeems no way reaſonable to bring any
" man into the condition, that the obligation
" of marriage ſhould remain and the helps and
" advantages of it be taken away: it is to di-
" vide what God hath joined, for he never
" appointed the one to go without the other:

" it

" it ſeems very abſurd to ſay, *two ſhall con-*
" *tinue one fleſh*, and yet be excluded from
" all converſe each with the other. If the
" eſſential bond of marriage be broken (as in
" fornication) that gives a rational ground
" for a total divorce; if it be not, while the
" bond continues unbroken, the duty ought
" to be performed; there appears no ground
" to ſuſpend the one, and continue the
" other."

This ſenſible and well-founded opinion, reſpecting partial divorces, was publiſhed, I ſay, near an hundred years ago; and yet the practice ſtill continues; nor is the abſurdity of ſuch practice in the leaſt palliated by the pretended caution, taken to ſecure the future continence of the ſeparated parties, even ſuppoſing their celibacy legally neceſſary. For by what rule ſo ever the ſpiritual courts may judge of the goodneſs and ſufficiency of ſuch caution, it is impoſſible they can foreſee what temptation the party may fall under, to break through the terms of it. They can-

not therefore, without the greateſt tyranny, exact ſufficient caution againſt all temptations that may ariſe. Knowing this, the caution they take, when they take any, is to almoſt all intents and purpoſes *inſufficient*. The parties are cautioned not to marry; but one or other perhaps does; and what then? They forfeit their caution: but the ſecurity given is, in ſuch caſe, nothing; or of no concern when ſet in competition with the temptation or apparent advantages of forfeiting it.

At the ſame time the innocent party, man or woman, is left without relief: while the poor children, ſtill more innocent and harmleſs, bear both the harm and ſhame, in being ſubject to all the hardſhips and obloquy of baſtardy!

And yet, notwithſtanding this glaring injuſtice and cruelty, the eccleſiaſtical courts ſtill pertinaciouſly perſiſt in annulling ſuch marriages, though not prohibited by ſtatute; con-

continuing at the ſame time to throw every obſtacle in the way of obtaining even the inſufficient divorce, they are graciouſly pleaſed on any terms to grant. To add to the cruelty of theſe proceedings, every encouragement is given to wanton women, to harraſs wealthy huſbands for alimony; while in every caſe the huſband is obliged to pay the expence of carrying on the ſuit againſt himſelf. This has been confeſt in the king's courts to be a great hardſhip; but they ſaid it was the practice of the courts-chriſtian, and they would not interfere to give the party relief.*

Surely it is high time for the legiſlature to teach theſe courts-chriſtian a little more chriſtianity! At the ſame time let it be obſerved, by the way, that the writer of theſe obſervations is very far from meaning, by any thing advanced in them, to encourage acts of gallantry in married men; although,

* See Burn Ecc. Law. art. Marriage. Sect. xi.

in their exculpation, it may be truly affirmed that both the cauſe and effect of incontinence, in the different ſexes, are widely different; and that, not merely in a publick and political view but alſo in a private and perſonal one.

What man is there, of the leaſt ſenſibility and delicacy, that does not return from his momentary debauch with diſguſt at the objects of it? What huſband, not totally degenerated, does not return with increaſed regard and affection for a virtuous, unupbraiding wife; whoſe character muſt riſe, exalted in the odious compariſon? He muſt be a groveling, a taſteleſs wretch, indeed, whoſe mind can be alienated from an agreeable and virtuous partner of his bed, by

— — the bought ſmiles
Of harlots, loveleſs, joyleſs, unindear'd;
Caſual fruition! ſought in court-amours,
Mix'd dance, or wanton maſk, or midnight ball.
PAR. LOST.

But

But is it the ſame with the other ſex? Far otherwiſe. The advantage, taken of a woman's perſon, may conſtitute the leaſt part of the injury done her huſband. A wife cannot violate the marriage-bed till her affections are totally eſtranged; her heart, her mind, muſt be contaminated: ſhe cannot be guilty of incontinence without laying wilful perjury to her ſoul, in the breach of her matrimonial vow.* She cannot admit a ſtranger to her embraces without abandoning her huſband, "him and his utmoſt hopes;" with-

* It is really aſtoniſhing to ſee with what facility young women of faſhion, educated at leaſt in the external forms of devotion, throw off all attention and regard both for the principles and practice of religion, the moment they are married and enter on the theatre of the great world. Could they otherwiſe reflect on the following denunciation, againſt the breach of matrimonial fidelity, without forming an inflexible reſolution never to be guilty of it? "Thus ſhall it go with the "wife who leaves her huſband, and brings in an heir "by another. For firſt, ſhe has diſobeyed the law of "the moſt high. And ſecondly, ſhe has treſpaſſed "againſt her own huſband. And thirdly, ſhe has play-"ed the whore in adultery, and brought children by "another man. She ſhall be brought out into the con-"gregation, and inquiſition ſhall be made of her children; "her children ſhall not take root, and her branches

out robbing, and expoſing to ſcorn, him and his whole poſterity. She muſt hate, abhor, deſpiſe the man, ſhe has ſo highly wronged; for they who commit ſuch injuries never forgive the injured. On the other hand, there are no men, perhaps, who ſet a juſter value, or entertain a higher reſpect for their wives; than thoſe, who, by having imprudently indulged themſelves in occaſional acts of gallantry with looſe women,* are taught to hold in

"ſhall bring forth no fruit. She ſhall leave her me-
"mory to be curſed, and her reproach ſhall not be blot-
"ted out." *Eccles.* xxiii. ver. 22, &c.

Can a woman, I ſay, that has ever had the leaſt pretenſions to a chriſtian education, read this terrible denunciation without being ſtruck with a ſentimental horror, that muſt have ſome influence on her conduct! but, alas, the Bible has long given place to Hoyle in the cloſets of our fine ladies! Woful exchange! "An irreligious woman is a monſter," ſays the ſententious Dr. Samuel Johnſon; and it is one of the beſt of the many ſingular ſayings imputed to him.

* I ſay with *looſe women*, in conformity to the opinion even of the rigid Cato.‡ The huſband, who attempts

‡ "Go on and proſper," ſaid he to a young ſpark juſt coming out of a brothel, "it is better for you to quench the fire of your youthful paſſions in ſuch places, than by going about to ſeduce other men's wives.

——— ——— *Maſte*
Virtute eſto, inquit ſententia dia Catonis:
Nam ſimul ac venas inflavit tetra libido,
Huc juvenes æquum eſt deſcendere, non alienas
Permolere uxores. Hor.

proper

proper contempt the vicious and abandoned part of the ſex.

It is not expected that our Engliſh ladies will give readily into this doctrine: but if they do not, it is becauſe they are either too foreignly modiſh to care for their huſbands at all, or that they cheriſh an infantine ſelfiſhneſs, which will not let them ſee their own intereſt. The beſt of them are often like children, who ſhew their fondneſs for a favorite animal, by perſecuting it with careſſes, till they kill it with kindneſs, or till it eſcapes, diſguſted, from ſuch

to ſeduce another's wife or daughter, is doubly criminal. It is true that, amidſt the diſſoluteneſs of modern manners and principles, the criminality is held but too light, and, in the warmth of conſtitution, the "hey-dey of the blood," as the poet emphatically calls it, it may be in vain to recommend to men of gallantry any thing of ſo grave a caſt as texts of ſcripture. I will venture nevertheleſs, to recommend to every married man of ſenſe and ſpirit the obſervance of that golden rule, "Do unto others as you would have them do unto you." And as to every man of fortune, who is ſingle, I would adviſe him to get married as ſoon as he can, and check the growing hopes of Doctor's-Commons, by keeping his wife from gadding abroad and a liberal obſervance of family duty at home.

offenſive

offenſive proofs of abſurd affection. Neither the fondneſs of childhood nor the dotage of age, are, by any means, that kind of love, which lays the foundation for laſting happineſs in the marriage ſtate. It is an affection, founded on reaſon; which, making a difference between faults and foibles, diſtinguiſhes by practical effects, and not fanciful ſpeculations, between vice and virtue. For, after all that can be ſaid on the ſubject,

If men would have the *nuptial union* laſt
'Tis VIRTUE *only* that can *bind it* FAST!

It is yet in vain to expatiate in general terms on virtue, without pointing out its particular practice. It is the misfortune of the fair ſex to entertain a very confined and inadequate idea of that liberal and extenſive term. By circumſcribing it within the narrow limits of mere chaſtity, they lay themſelves open to aſſault in the only part in which they are moſt vulnerable. There are a number of collateral duties and decencies attendant on every car-

dinal

dinal virtue, without which the latter not only loſes its dignity but its conſequence.

It has been repeatedly and truly ſaid that it is not enough for a woman to be virtuous without ſhe appear ſo.

The compariſon drawn by Rouſſeau, between the married ladies of ancient and modern times, will ſet this matter in a true light. "Nature," ſays he, and he might have added ſociety "affords not a more engaging and delightful picture, than that of a mother ſurrounded by her family of children, regulating the ſeveral occupations of her domeſticks, endeavouring to make her huſband eaſy and happy in his ſituation, and directing the whole œconomy of her houſe with prudence. It is here that the diſcreet wife appears in her glory; it is here that ſhe really commands reſpect, and that beauty juſtly ſhares the tribute paid to virtue. On the contrary, when the miſtreſs of a family rambles abroad, her houſe is, like a lifeleſs body, ſoon corrupted; ſhe herſelf

ſelf loſes her principal luſtre, and appears to a great diſadvantage, being ſtripped of her native ornaments. If ſhe be married, what buſineſs hath ſhe among men? If ſingle, why does ſhe run the danger of diſguſting by her indecent behaviour, the man who might poſſible be inclined to make her his wife? Let her act as ſhe will, it is evident ſhe is out of her ſphere when ſhe goes abroad; while even her beauty, which pleaſes the eye without engaging the heart, expoſes her but the more to cenſure. Let this impreſſion come from nature or education it is no matter, it is univerſal and common to all nations. Women are every where reſpected for their modeſty; and the men univerſally conceive, that when the fair ſex neglect decorum, they likewiſe neglect their duty. It is plain to all, that when the women affect a maſculine aſſurance, it degenerates into effrontery, and that in debaſing themſelves by this odious imitation, they are a diſgrace both to their own ſex and ours.

I know

"I know that in ſome countries different cuſtoms prevail; but then obſerve of what kind of manners they have been productive. I ſhould need no other example to confirm my principles. Let us apply to the manners of women, what has been already mentioned reſpecting the honour that has been paid them. Among the antients, in all civilized nations, the women lived very cloſe and retired: they appeared ſeldom in publick; they never walked abroad with men; they were not placed in the front rows in the theatre; nor were even permitted to go to all kinds of entertainments. At the Olympic games in particular it is well known, they durſt not appear, on pain of death.

"At home they had a private apartment, where the men never entered. It was ſeldom they appeared even at table, when their huſbands had company to dinner, women of reputation always went away at leaſt before the end of the repaſt, and others did not appear there at the beginning. There was no com-

mon

mon places of meeting for the two ſexes, nor did they ever ſpend the day together: by this means taking care not to be cloyed with each others company, they met each other again with greater pleaſure; and it is certain that domeſtic peace in general, was much better eſtabliſhed, and a greater harmony prevailed among married people in thoſe days, than there does at preſent.*

* We might impute the cauſe of this to the facility of divorce; but the Greeks ſeldom made uſe of this privilege; and Rome had exiſted five hundred years, before any body took advantage of the law permiting divorces.†

† This obſervation has been made by many writers beſides Rouſſeau, without any comment on the ſingularity of the fact. Spurius Carbilius, is ſaid to have been the firſt who diſmiſſed his wife for ſterility; for which action, if we believe Valerius Maximus, he received a ſevere reproof; being told that the deſire of children ought to give place to conjugal obligations. But ſuch reproof was in ſome meaſure abſurd, as the procreation of children is the firſt and greateſt of conjugal obligations; and, though the huſband might be to blame for repudiating a woman whoſe ſterility was a natural defect, he would certainly have been juſtifiable in taking another wife, after the example of the patriarchs, or as Mark Antony did afterwards, without diſmiſſing the former. A very good reaſon alſo may be given for the diſuſe of polygamy and divorce in the earlier ages of the Roman republick. In the infancy of ſtates, a general equality of circumſtances prevails among individuals, ſo that one man being as well able to maintain a wife as another, every one marries, and of courſe very few, if any, could have more than one wife, were they ſo diſpoſed; ſo that no ſuch cuſtom could prevail. The caſe is very different in ſtates of full growth, where the inequality of mankind is exceſſive, and where enormous wealth enables one man to ſupport a number of wives and concubines; while extreme poverty will hardly permit another man to maintain one.

"Such

Such were the cuſtoms of the Perſians, the Greeks, the Romans, and even of the Egyptians, notwithſtanding the illiberal pleaſantry of Herodotus, which confutes itſelf. If their women ſometimes treſpaſſed the bounds of modeſty, the publick outcry againſt them ſufficiently ſhewed it was an exception to a general rule. What has not been ſaid of the Spartan women? From the Liſiſtrata of Ariſtophanes we may alſo learn, how much the impudence of the Athenian women was ſhocking to the Greeks in general. Even in Rome when corrupted, the people were offended at the ſcandal of ſeeing the Roman ladies preſent at the tribunal of the Triumviri.

"Every thing is at preſent changed. When ſwarm of barbarians ſpread themſelves like a torrent over Europe, bringing their wives along with them to the field; the freedom of camps, added to the natural coldneſs of a northern climate, which rendered reſerve leſs neceſſary, introduced a different manner of living; which was further encouraged by

by books of chivalry, in which fair ladies are repreſented as paſſing their whole lives in procuring themſelves to be run away with, though all very modeſtly and honourably. Theſe books being the ſchool of gallantry for the times, the people imbibed hence a notion of free converſe between the ſexes; which was ſoon introduced in courts and great cities, where they pretended moſt to politeneſs. This politeneſs, by its progreſs, however, could not fail of degenerating into impudence. Thus it was that the natural modeſty of the ſex diſappeared, and the manners of ſutlers' wives became to be adopted by women of quality."

Notwithſtanding the contraſt here drawn between the different modes of behaviour toward the fair ſex in ancient and modern times, the ſame writer maintains that the ancients had a much greater reſpect for the women than we moderns. But they ſhewed it, ſays he, by keeping them from the publick eye; and imagined they did honour to their modeſty

deſty by being ſilent about their other virtues. It was a maxim with them that the pureſt manners always prevailed in thoſe countries, where the leaſt was ſaid of the women; and that ſhe muſt be the moſt virtuous who was leaſt the ſubject of converſation, On this principle it was, that a Lacedæmonian, hearing a foreigner run on greatly in commendation of a lady of his acquaintance, angrily interrupted him, and aſked him if he would never have done depreciating a virtuous woman.——With us, on the contrary, the women held in higheſt eſtimation are thoſe who make the moſt noiſe; who are the moſt talked of, the moſt frequently ſeen in publick; who keep moſt company; who are moſt poſitive, and who give themſelves the moſt inſolent airs: the honour of putting a modeſt man to the bluſh belonging only to women of the firſt breeding. But, according to this ſhrewd and ſenſible obſerver on mankind, the female virtues never diſplay themſelves but in a life of retirement; the peculiar province of women is the peaceful management of their families;

their dignity conſiſts in modeſty; baſhfulneſs is in them inſeparable from chaſtity; to court the looks of the men is a mark of corruption, and every woman diſhonours herſelf who is fond of appearing in publick.

Great as is Rouſſeau's authority with our Engliſh ladies, I have no hopes that they will generally ſubſcribe to it in this particular. The love of admiration is ſo natural to the ſex and the love of power to all mankind, that we are not to expect that they, who are in poſſeſſion of the one or the exerciſe of the other, will voluntarily give up ſuch darling prerogatives.

When a power however, of ſo much importance to community, is miſplaced or miſapplied, it is a duty, incumbent on the guardians of ſociety, to wreſt it from ſuch improper hands or at leaſt to lay a reſtraint on its miſapplication. But neither is this ſo eaſily effected as may be imagined. It is often miſtakenly conceived that the legiſlature is omnipotent,

and

and that the laws of a people have an immediate and neceſſary influence on their morals. The caſe is ſomewhat different. The influence of government, however direct and poſitive, will make no laſting impreſſion on public manners till it hath equally affected public opinion. Neither is it in the virtues of individuals that we are to ſeek for the ſource of a general reformation.

The bulk of mankind, in a ſtate of ſociety, live not ſo much for themſelves as for others; nothing ſeems eligible to them but what is ſtamped with the public approbation; the only happineſs generally ſought after being that of appearing happy in the eyes of others.

Great examples have in paſt ages had great effects; but we ſeem to live in an age when even the moſt illuſtrious examples in favour of conjugal virtue are void of influence. Caſtamore, whoſe tract, on the miſchiefs of matrimonal infidelity, appears to have been written about the time of the revolution, imputes

the licentiouſneſs of thoſe days to the two preceding reigns. As the people of Iſrael, ſaid he, followed the ſins of Jeroboam; ſo *regis ad exemplum* the ſins of the Stuarts made England to ſin. But to what ſhall we impute the more than tenfold increaſed licentiouſneſs of the preſent age? an age in which the moſt ſhining example of conjugal virtue, that ever graced the annals of ancient or modern times, beams its imparallelled luſtre from the throne!

What an inſult to majeſty the many infamous proofs of the inefficacy of ſuch an example on the females of many of the firſt families of diſtinction about the court! What a picture might not the pen of cenſure draw, even with truth, of the Meſſalinas of the preſent age!*

* At the head of hundreds who have been prudential enough to ſkreen themſelves from public detection, we might place in a conſpicuous point of view, ſeveral who are ſo loſt to ſhame as ſcarcely to know what it is; ſuch are the Dutcheſs of K. Lady H. Lady K. and many others; but theſe are of too long ſtanding on the roll of

But

But by what means is their number or infamy to be leſſened, if neither private virtue, public

infamy to have had the opportunity of profiting by the royal example, which might have been expected to have had its due influence on the younger part of the ſex.

What ſhall be ſaid then to Lady D. S. ſiſter to his grace the Duke of M.? This lady was firſt married to Lord B. and, after an amicable divorce, from her huſband, remarried to her gallant Mr. B.

What to Miſs L. only daughter of Lord R.? firſt married to the Duke of G. and after divorce remarried alſo to her gallant the Earl of U. O.

What to Lady S. B. ſiſter to his grace the Duke of R.? This lady, like the preceding, a conſummate beauty, having ſurmounted the decorum of education, fell into the moſt extravagant indecencies; eloping with her lover Lord W. G. and declaring to her huſband that the only child ſhe ever had, was the fruits of her amorous intercourſe with the adulterer.

What to Lady A.? whoſe infidelity is notorious to all the world but her huſband?

What to Lady G.? who, without any other paſſion but vanity to gratify, almoſt worked herſelf up, for a prince of the blood, into the fever of luſt.

What to Lady L. daughter of Mr. G. P. and his celebrated ſpouſe? *libidinoſa filia matre libidinoſior.*

What to Lady W. wife of Sir G. W. once a maid of honour, though now a wife of infamy? on whom, nevertheleſs, it is poſſible her injured huſband will not be able to obtain juſtice in our ſpiritual courts, where a ſuit between them is now depending.

public example, nor even the legiſlature itſelf can effect a reformation, without, the concurrence of the general opinion and cuſtoms of the world? I anſwer by the legiſlature's enacting laws, which may affect that general opinion, and work a change in ſuch licentious cuſtoms. Let the marriage act be new modelled; let divorces on juſt and reaſonable grounds be readily obtained; and let the unjuſt and infamous practice of female recrimination in matrimonial proſecutions be aboliſhed. By this means huſbands will by degrees reaſſume that proper authority over their wives, which God and nature has given them;* and wives will return to that rank of

What to Lady Mary H. daughter to the earl of E. lately eloped from her huſband General S.?

But here let me ſtop, nor give farther pain to the noble and honourable relations of women, unworthy either the names and families to which they have been connected or from which they unfortunately derived their birth.

* If indeed there be huſbands whoſe private vices are ſo enormous as to give their wives that advantage over them, which conſcious virtue will ever maintain over vice, they merit the ſtate of ſubjection to which they are reduced. If there ſhould be an opulent wretch, though of plauſible

ſubordi-

ſubordination, beyond which nothing but foreign modes, the caprice of cuſtom and the imbecillity of huſbands ever permited them to wander. The conſequence is ſelf-evident, and a reformation in the preſent licentious manners, particularly in the married ſtate, would inevitably take place.

That I am not ſingular in this ſuppoſition, will appear on citing the opinion of Caſtamore, juſt-mentioned, on the ſubject; given at a period when profligacy of manners was infinitely leſs than at the preſent era; almoſt the whole nation being now infected with the enormous follies and vices of a diſproportionate and diſſolute metropolis!

demeanour and fair character, capable of debauching his own daughter, providing ſecretly for diſburthening her of her ſhame, and afterwards marrying her to his boſom friend; if there be ſuch a man, or rather monſter, ought he not, inſtead of having authority over his wife, to be held in ſubjection and deteſtation by all humankind? "That's wormwood, wormwood, S—, but what of that? "we that have free ſouls it touches it not. Let the galled "jade winch; our withers are unwrung."

" Surely it would be a matter not unworthy the thoughts and conſideration of the high court of parliament, to reflect upon the numerous miſchiefs, which this too common conjugal incontinency produces, and preſcribe ſuch antidotes as might timely put a ſtop to it! How many thouſand families in England will think themſelves obliged to call them for ever bleſſed for it? And bleſſed they muſt needs be, who make their authority a terror to iniquity, and take care that vice ſhould never trample upon their power, nor a wickedneſs ſo daring, ſo miſchievious, and odious as this, ſhould ever paſs any longer without a due cenſure, and juſt puniſhment. Were this effeminate liberty but effectually ſuppreſſed by their wiſe determinations, what a lovely alteration would it work throughout the whole kingdom! and how many injured perſons, whoſe tempers are now dejected with private grief and diſcontent, would then have them turned immediately into a pleaſant chearfulneſs and ſatisfaction? Our men would then be more hale and vigorous, more active

and

and hardy than now they are, and not be enervated with effeminacy, and ſubdued with ſharp pains and diſeaſes of luſt; nor yet be racked with violent and impetuous paſſions derived from the depraved appetite of the parent. How many eſtates might then be ſaved who now are waſted and conſumed by prodigal expenſive lewdneſs? And how many families live like brethren in love and amity, who are now only the nurſeries of jealouſy and diſcontent.

"Were theſe formidable difficulties of marriage but removed, and the wife ſafe in the love of her huſband, and he in the affections of his wife, and the legitimacy of her offspring, and not expoſed ſo deſperately to the falſity of her love, men then would entertain the thoughts of wedlock with the ſame honourable eſteem as that ſolemnity gained at its firſt inſtitution; which would no more be looked upon as a ſtate ſlavery, but freedom; as fit for man even in his ſtate of innocence and perfection; and a bleſſing deſigned to inhance the pleaſure, and multiply all the comforts and delights of life. But

ſuch

ſuch a happy change as this can never in England be expected, till ſome wiſe reſolutions animate the auguſt aſſembly of the nation to eſtabliſh ſuch an act againſt this diſſolute matrimonial behaviour, as may reſtrain the married perſon within bounds of modeſty; which is the only means of promoting that honourable eſtate, which is now ſo wretchedly neglected; and of reviving its decayed felicities and comforts. For now the impunity of it has encouraged its violation to that degree of aſſurance and boldneſs, as if the offenders were really lawleſs, and outbraved the force of civil conſtitutions, and the power of the legiſlature to reſtrain them. For effecting which, it might not be amiſs to contrive ſuch a method and law, as might render divorces leſs chargeable and difficult than now they are. For ſince all divorces, with the liberty of marrying again, proceed from the authority of parliament; therefore if either there chance to be no ſeſſion for ſome time; or if there be the parliament has no opportunity of diſpatching ſuch private concerns; or if the perſon injured

injured be a man of no application, or be deſtitute either of money or of time to go through with ſuch a weighty affair; in all theſe inſtances he muſt be forced to ſilence, and privately to ſtruggle with his inward burthen and his grief, becauſe he is not qualified for a deliverance from the difficulties of them. And therefore, ſince our Saviour aſſures us, and the moſt judicious caſuiſts atteſt, that upon the account of fornication it is really lawful both to divorce and to marry again, why ſhould not ſome more eaſy method be thought of, than now is practiſed, for relieving the party injured and oppreſſed: and certainly it were more deſirable, that the ſpeedy diſpatch of the Jewiſh manner of divorce, "be expelled from me, and free for any body elſe upon juſt conviction,"* were

* The ancient form of the bills of divorce, given by the Hebrews to their repudiated wives, is ſaid to import as follows. "Mea ſponte nullius coactu te uxorem hactenus meam dimittere, à me deſerere ac repudiari decrevi: jamque adeo te dimitto, deſero ac repudio, atque à me ejicio, ut tuæ ſis poteſtatis, tuoque arbitratu ac lubitu, quò licet diſcedas, neque id quiſquam ullo tempore prohibeſſit, atque ita dimiſſa eſto, ut cuivis viro nubere tibi liceat."

allowed

allowed, than ſuch as are ſo tedious and expenſive as thoſe now to be obtained.

"Since, therefore, the happy conſtitution of government takes care of other properties, it will not, I hope, hereafter ſuffer this, which is moſt dear and tender, to be ſo eagerly invaded and raviſhed from us. Nor will thoſe laws which are a defence for an ox or an aſs, overlook the ſecurity of the moſt valuable enjoyment, neglect the rights and intereſts of the conjugal bed, and not maintain the ſtaple comforts of our lives in all the duties and obligations of matrimonial conſtancy and indearments."

I am not unaware of the oppoſition that will be raiſed to a reformation of this kind. I well know that the only ſet of men in the kingdom, who beſt ought to know better, will withſtand it with all their might; I mean the clergy: at leaſt that part of them, who with equal reaſon and juſtice oppoſe the conſcientious deſire of ſome of their brethren,

thren, to obtain a reviſion of the articles and liturgy of the church of England.

As a proof that I am not miſtaken, I will here quote the very words of one of theſe orthodox divines; who, after railing at the ſcruples of his fellow clergy, proceeds thus. "If my brethren muſt make their appear-
"ance upon the public ſtage, let them ſhew
"their zeal by petitioning and remonſtrating
"againſt real grievances and corruptions; let
"them exclaim where chriſtianity is really
"injured, and every honeſt chriſtian knows
"it to be ſo; let them place in the moſt
"alarming light the ſhocking profaneneſs of
"human authority's diſpenſing with the
"laws of Heaven, of aboliſhing and diſſol-
"ving matrimony (the inſtitution of God,
"and which God has expreſſly forbidden
"man to diſſolve) by a Britiſh act of par-
"liament. In ſuch caſes (degenerate as the
"times are) I have too good an opinion of
"my brethren not to entertain comfortable
"hopes that they would be joined by a very
"reſpecta-

"reſpectable majority, both of high and "low."

I will not enter into any controverſy with this modeſt divine, about the *ſhocking profaneneſs* of king, lords and commons, in taking upon them to diſſolve the *civil contract* of *matrimony*; nor will I pretend to judge how reſpectable might prove the majority of the *high* and *low* of which he entertains ſuch comfortable hopes. His zeal is very plainly not a zeal according to knowledge: for I will venture to defy a whole convocation of ſuch divines, with the bench of biſhops at their head, to prove that MARRIAGE, as they affect to define it, viz. "an obligation binding a man to have carnal commerce with but one woman during her natural life," either is, or ever was, of divine inſtitution.

I am far from denying that, where the wedded parties are helps meet for each other agreeably to the terms of the original ordinance,

nance, that matrimonial fidelity, according to the modern acceptation, is a neceſſary and highly commendable virtue; but ſtill I ſay, it never was required by God's law in any caſe, and there may be many caſes in which ſuch fidelity would be a breach of the very firſt commandment given by God, and directly contrary to the chief end for which the union of the ſexes was deſigned.

It would better become theſe learned divines, inſtead of declaiming againſt a huſband's obtaining a divorce from an adulterous wife, to ſhew on what good grounds either of ſcripture or reaſon, a wife is permited to ſue out a divorce from her huſband for any cauſe at all. For this was neither enjoined by Moſes, nor dictated by Jeſus Chriſt, nor practiſed among the Jews.

Much, I know, hath been ſaid about the dangerous conſequences of eaſily granting divorces: and perhaps, in a political view, divorces may have heretofore been too eaſily obtained;

obtained; eſpecially when it was the cuſtom to grant them ſolely upon the confeſſion of the parties. Not that I think, with Gibſon,* the great inconvenience lay in the number of ſuch divorces; for I think the reſpectable ſtate of matrimony could receive no honour from the cohabitation of ſuch parties; and therefore the more of them were ſeparated the better.

There might be caſes, indeed, in which very young and helpleſs children might be the ſufferers by ſuch divorces, and therefore caution was neceſſary in granting them.

It is to be obſerved, however, that this caution is merely political and not religious: there is no ſuch thing required by the divine law. The rule of the canon law, upon this head, is deduced merely from a decretal epiſtle of Pope Celeſtin the third; and proteſtants are not bound, as I have before obſerved, by popiſh decretals.

* Gibſ. 445.

Oughton

Oughton and Gibſon, it is true, tell us ſtrange ſtories of colluſive methods that have been taken to obtain divorces, by which whole families of children might have been baſtardized; and innocent women divorced from their huſbands without knowing anything of the matter.† Clerke ſays, he knew two inſtances in his time, where ſuppoſititious women (not the wives of the parties) were ſuborned to come and confeſs the adultery, as if they had been the real and true wives.‡

But who does not ſee how eaſily theſe inconveniences are prevented or redreſſed? I have known, in my time, a ſuppoſititious woman married to a man, and on the other hand a ſuppoſititious man married to a woman, under falſe names, in order to fix a marriage on perſons entirely ignorant of the tranſaction. But what then? This might

† Gibſ. ibid,

‡ 1 Ought. 316. See alſo Burn's Ecc. Law. art. Marriage. Sect. 11.

as well be made a plea for refuſing to marry parties who are perſonally ſtrangers to the prieſt, as the other pretext be made a plea for the refuſal of a divorce by the ordinary.

Numberleſs have been the frivolous pretences of the ill conſequences of readily obtaining divorces: but none of them have been in any degree proportionate to the evident evils of retaining adulterous wives. The education of the children, it has been ſaid, would be affected by the depriving a family of the mother. Better by far that children ſhould be motherleſs, than be brought up by an adultereſs. The female children muſt doubtleſs greatly profit both by her precept and example. No, I ſay with Zonaras, in theſe caſes *maritus pollutam ex edibus ſuis excludet*, Let the huſband turn the adultereſs out of doors.

Of the ſame opinion was the celebrated Bernardino Ochino, the particular friend of Peter Martyr, Bullenger, Martin Bucer, Latimer, and the

the other principal reformers. " If, ſays he, divorce ſhould be practiſed for adultery, according to God's word, whenever it were done, by order of the magiſtrate, it would give occaſion of offence to no man: And, if ſo be, nevertheleſs, ſome wicked perſon ſhould, by ſuch divorce, take offence where none is given, it were not, therefore, juſt to compel the innocent huſband to hold ſociety with ſo wicked a woman, to his great diſgrace and infamy, as in ſuch a caſe would happen; or to live ſingle all his life after, whether he were indued with the gift of continence, or not. Conſider how many inconvienences have ariſen upon this ground, viz. becauſe it has been forbidden wholely to divorce for adultery. In the firſt place, many men have killed their wives whom they have taken in adultery, that they might free themſelves from ſo ſhameleſs a companion, and have, by that means liberty to marry another; which they would not have done, if they might have been allowed to divorce them. Morever many huſbands, offended by their wives adultery, and loathing

to hold ſociety with them, have given them poiſon privately, or have run away from them, and many times, the wives themſelves for fear of death, have abſtained from the ſociety of their huſbands, in ſuch caſes; and, wanting the virtue of continency, have commited innumerable crimes;* which they had not done, if, being made each of them free by divorce, they might have joined themſelves to ſome other in marriage. And theſe are the fruits of thoſe holy interdictions of the POPE, forbiding divorce for adultery, and licenſe to the divorced to marry again."

But to have done with argument; and as I have renounced declamation, I ſhall take leave of my readers with the ſober advice of a candid and moderate philanthropiſt: wiſhing that my countrymen may take the ſubject, treated of in the foregoing ſheets, into ſerious conſideration; that they may thence reflect on

* And that even during cohabitation; even to the poiſoning of their huſbands; of which there are many recent inſtances in the annals of this country.

what

what they owe to themſelves, and the value they ought to ſet on the authority of huſbands, both for their own ſake and that of their poſterity; that they may leave, to the fantaſtical French and emaſculated Italians, the contemptible meanneſs, of being made ſlaves to the caprice, and dupes to the vanity, of a ſex, which nature deſigned for the uſe, comfort and convenience of man. As Engliſhmen, may they know and exert every privilege, derived to them from their brave and virtuous anceſtors; reſtoring to its ancient luſtre our tarniſhed reputation, as a nation of men, moraliſts, ſages, heroes!

THE END.

BRITISH MUSEUM

Preparing for the Preſs,

By the AUTHOR of the foregoing Tract,

THE

HISTORY

OF

'SQUIRE MORGAN.

Safe from the BAR, the PULPIT, and the THRONE,
And *ſhameleſs*, ſave from RIDICULE alone.

POPE,

Printing for the Trade,

By the Author of the foregoing Tract,

THE

HISTORY

OF

SQUIRE MORGAN.

Safe from the Bar, the Pulpit, and the Throne,
And yet alone, for I have Friends alone.

Pope.